

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

76-6170

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

THIRTEEN (13) GAMBLING DEVICES,

Defendant-Appellant.
----- X

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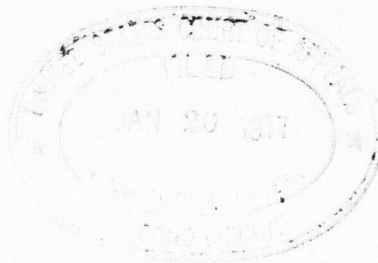
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Appeal from the United States District Court
for the Southern District of New York

APPENDIX OF THE DEFENDANT-APPELLANT

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(502) 584-2482

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

DATE	PROCEEDINGS
12/19/74	Filed Complaint, Issued Summons.
12/30/74	Filed Answer and Claim of Alexander M. Horner.
1/9/75	Filed Warrant for Arrest with marshal's return dated 12/23/74 and proof of publication in the N. Y. Law Journal on 1/3/75.
2/20/75	Pre-trial conference held by Hartenstine, U.S. Magistrate.
2/26/75	Filed claimant Alexander M. Horner designation of local counsel.
1/5/76	Filed plaintiff's affidavit of William S. Brandt in opposition to the withdrawal of the claimant's counsel.
3/16/76	Filed Order that John R. Wilson be permitted to argue or try the above-styled matter pending before this Court. CANNELLA, J. (m/n)
3/22/76	Filed Agreed Order--that John R. Wilson, 620 Marion E. Taylor Building, Louisville, Ky. be substituted as counsel for the deft. and Alexander M. Horner in place of Donald L. Cox. CANNELLA, J.
4/27/76	Filed deposition of Alexander M. Horner taken on 4/20/76.
4/30/76	BEFORE CANNELLA, J. NON-JURY TRIAL BEGUN AND CONCLUDED. Judge's decision reserved.
6/2/76	Filed defts. supplemental trial memorandum in support of motion for directed verdict.
6/22/76	Filed Affidavit of Pltff. based upon the files and records of Endicott and upon conversations in the course of my duties with employees and affiliates by Hans G. Eschricht.

DATE	PROCEEDINGS
6/22/76	Filed Pltf's Post Trial Memorandum of Law.
7/12/76	Filed Deft's and Claimants REPLY to Pltf's Post Trial Memorandum.
7/12/76	Filed Transcript of record of proceedings dated 4/30/76.
7/29/76	Filed Opinion #44877 and Order--for the reasons stated, the machines and slugs are ordered forfeited to the United States of America, and costs are assessed against the claimant. The Government is instructed to submit a judgment on notice within two weeks. The foregoing constitute the findings of fact and conclusions of law of the Court pursuant to FRCP 52(a). So ordered-CANNELLA, J. (m/n)
8/31/76	Filed Judgment No. 76,798 that Pltf. have judgment against the deft., that Devices are forfeited to the U.S., that U.S. Marshal shall transfer custody of trial exhibits to FBI etc. as indicated that U.S. Marshal destroy remaining Devices and make his deposition etc. and that United States shall have costs pursuant to 28 USC §1920, 1921 and 1923. Rule 54(d), in the amount of \$479.12. CANNELLA, J. JUDGMENT ENTERED: 8/31/76. m-n notified Marshal.
9/2/76	Filed Pltf's Reply Affidavit to the claimant's opposition to the inclusion of the trial transcript as costs pursuant to 28 USC §1920(2). etc. by William S. Brandt.
9/8/76	Filed Deft's and Claimant Statement of exceptions and objections to Judgment tendered by plaintiff.

Docket Entries

DATE	PROCEEDINGS
9/15/76	Filed Deft and Claimant's Notice of Motion for a new trial and to amend judgment. (no return date)
10/29/76	Filed deft's notice of appeal to USCA from the final judgment entered on 8/31/76. Copy mailed to: William S. Brandt, AUSA Ent. 10/29/76.
11/5/76	Filed memo endorsed on motion filed 9/15/76 the within motion for a new trial, or in the alternative, to amend the judgment is hereby denied So ordered- CANNELLA, J. (m/n)
11/24/76	Filed notice that the record on appeal has been certified and transmitted to the USCA on 11/24/76.
12/9/76	Filed notice that the first supplemental record on appeal has been certified and transmitted to the USCA this day.

VERIFIED COMPLAINT

A-4

Plaintiff, United States of America, by its attorney, Paul J. Curran, United States Attorney for the Southern District of New York, for its complaint herein, alleges upon information and belief.

1. This Court has jurisdiction over the subject matter pursuant to 15 U.S.C. §1177 and 28 U.S.C. §1345 and 1355.

2. Plaintiff brings this action to seize and forfeit thirteen gambling devices, as described as follows:

1. One slot machine, metal, with drum, fruit insignia, manufactured by M. M. Company, operated by English coin, color red, Serial Number JR 1090.
2. One slot machine, with drum, fruit insignia, metal, red and yellow, manufactured by M. M. Company, Serial Number JR 1030.
3. One "Mills" slot machine, red and yellow, with drum, fruit insignia, Serial Number JR 1.
4. One "Mills" slot machine, red and yellow, with drum, and fruit insignia, Serial Number 1A.
5. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 002370 with payoff as follows:

Left

7 pays 2

7 pays 2

Play Again

4-5-6-8-9-10

2-3-12

Crap you lose

Right

4 pays 8

5 pays 8

6 pays 2

8 pays 2

9 pays 8

10 pays 8

7 in right you lose

6. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 001261, with payoff the same as Number 5.
7. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 002297, with payoff the same as Number 5.
8. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 002328, with payoff same as Number 5.
9. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 1034, with payoff same as Number 5.
10. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 002298, with payoff same as Number 5.
11. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 002342, with payoff same as Number 5.
12. One automatic dice tumbling machine, name "Bones" manufactured by Churchill, Chicago, Illinois, with Serial Number 002323, with payoff same as Number 5.
13. Homemade eight inch by twelve inch dice tumbling machine, Serial Number 1175 with two dice and three colors, red, yellow, and blue.

3. These gambling devices were imported into the United States on or about June 26, 1974, by Alexander M. Horner, 11606 Osage Road, Anchorage, Kentucky, via Endicott Overseas Express, Inc. from London Automatics, 11A Boston Road, Hanwell, London, England; and currently are being detained by the U.S. Customs Service at Endicott Warehouse, 555 West 33rd St., New York, New York.

4. These devices are "gambling devices" within the meaning of that term as defined by 15 U.S.C. §1171.

Verified Complaint

A-6

5. These gambling devices have been transported in violation of 15 U.S.C. §§1172-1174, and therefore are subject to seizure pursuant to 15 U.S.C. §1177.

6. Pursuant to 19 U.S.C. §§1607-1609 and 28 C.F.R. Parts 3 and 9, the United States Marshal for the Southern District of New York has taken all of the steps required by law to forfeit these gambling devices administratively.

7. Alexander M. Horner has filed the only claim for these gambling devices pursuant to 19 U.S.C. §1608. The claim is annexed hereto as Exhibit A. A certified check in the amount of \$250.00 was also submitted by the claimant, and such monies have been deposited with the United States as a bond against the cost and expenses of these proceedings, pursuant to 19 U.S.C. §1608.

WHEREFORE, plaintiff prays that process of warrant of arrest of the gambling devices issue; that all persons having any interest therein be cited to appear herein and answer the aforesaid premises; that this Court decree the forfeiture of the gambling devices and grant plaintiff the costs and disbursements of this proceeding; that the gambling devices be disposed of as this Court may direct; and that plaintiff have such other and further relief as is proper.

Dated: New York, New York
December 18, 1974

Paul J. Curran
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: /s/
MICHAEL DEVORKIN
Assistant United States Attorney
Office and Post Office Address
United States Courthouse
Foley Square
New York, New York 10007
Tel.: (212) 791-1974

ANSWER AND CLAIM

A-7

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 74-CIV-5588 J.M.C.

UNITED STATES OF AMERICA,)
Plaintiff)
v.)
13 GAMBLING DEVICES,)
Defendant)

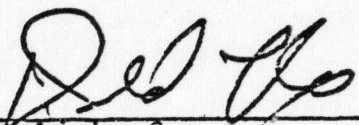
ANSWER AND CLAIM

Comes Alexander M. Horner, by counsel, and for his Answer and Claim herein states as follows:

1. Incorporates by reference the matters set forth in the claim filed as Exhibit A with plaintiff's verified complaint.
2. Admits the allegations contained in paragraph 1 of plaintiff's complaint; so much of the allegations of paragraph 2 of plaintiff's complaint as describes the devices sought to be seized; and so much of paragraph 3 as describes the importation and detention of the devices.
3. Denies the allegations contained in paragraphs 4 and 5 of plaintiff's complaint.
4. Is without sufficient information to form a belief as to the truthfulness of the allegations contained in paragraph 6, and therefore denies same.
5. Admits that he has filed a claim for the devices, along with a certified check as bond, but is without sufficient information to form a belief as to whether other claims have been filed, and therefore denies this allegation.

6. Denies specifically that the alleged devices are gambling devices as alleged in paragraphs 2, 3, 4, 5, 6, and 7.

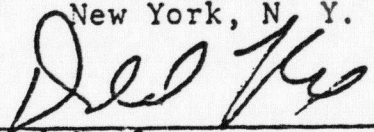
WHEREFORE, Alexander M. Horner prays that plaintiff's complaint be dismissed and that the devices in question be returned to him or his designer; and for all relief which may appear appropriate.



Donald L. Cox
Counsel for Alexander M. Horner
414 Marion E. Taylor Building
Louisville, KY 40202
(502)589-4215

It is hereby certified that a true copy of the within was mailed this 26th day of December, 1974, to

Michael Devorkin
Assistant United States Attorney
United States Courthouse
Foley Square
New York, N. Y. 10007



Donald L. Cox
Counsel for Alexander M. Horner

DEPOSITION OF ALEXANDER M. HORNER
(Pages A-9 to A-31)

A-9

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

[1]

3
4
5 UNITED STATES OF AMERICA

PLAINTIFF

6 VS.

7 VERIFIED COMPLAINT 74 CIV 5588
(JMC)

8
9 THIRTEEN (13) GAMBLING DEVICES

DEFENDANT

10
11 This will be the deposition of ALEXANDER M.
12 HORNER, taken on discovery, pursuant to notice here-
13 tofore filed, in the office of John R. Wilson, 620
14 Marion E. Taylor Building, 312 South Fourth Street,
15 Louisville, Jefferson County, Kentucky, on April 20,
16 1976, at 3:30 P.M., upon oral examination, and to be
17 used in accordance with the Federal Rules of Civil
18 Procedure.

19
20 APPEARANCES

21 For the Plaintiff, David L. Huber, Assistant United
22 States Attorney

23 For the Defendant, John R. Wilson

24 ** **

[2]

1 MR. HUBER: John, can
2 we enter into a stipulation on all object-
3 ions except as to form of questions to be
4 reserved?

5 MR. WILSON: Yes.

6
7 ALEXANDER M. HORNER,
8 called on behalf of the defendant, and after first
9 being duly sworn, was examined and deposed as follows:

10
11 EXAMINATION BY MR. WILSON:

12 Q. State your name, sir.

13 A. Alexander Montgomery
14 Horner.

15 Q. Where do you live,
16 Mr. Horner?

17 A. Anchorage, Kentucky.

18 Q. How long have you lived
19 there?

20 A. I have lived there for
21 about 47 years, exclusive of the time that
22 I was in the service, but I have maintained
23 a residence there for 47 years.

24 Q. And what is your occupa-
25 tion, Mr. Horner?

[3]

1 A.

I am retired from the
U. S. Air Force as a Warrant Officer.

3 Q.

Give me a very brief
description of your military career, please,
sir?

6 A.

I enlisted in the U.S.
Army in October of 1942 and served in the
976 Field Artillery Battalion and the
1179th Military Police Company until
November of 1945, at which time I was dis-
charged honorably, and I went to work for
the Kosmos, K-o-s-m-o-s, Kosmos Portland
Cement Company in January of 1946.

14 Q.

Is this a family owned
business?

16 A.

This is a family owned
business, yes. It's a local business.

18 Q.

Let me ask you, Mr. Horner,
were you decorated during World War II?

20 A.

Yes, I was. I received
the uh, European Theatre Medal with, I think
it was, about three stars and the American
Theatre Medal, the Purple Heart, about six
of them, and various decorations that I

1 [4] don't recall but I have about six or seven
2 decorations for World War II.

3 Q. Okay. What did you do
4 after 1946? You say you went to work for
5 the Kosmos Portland Cement Company.

6 A. I worked for the Kosmos
7 Portland Cement Company until 1950, October,
8 1950, at which time I was recalled to active
9 duty with the Kentucky Air National Guard,
10 and they were sent to Fort Knox, the
11 Kentucky Air National Guard, and from there
12 I transferred with that unit to England as
13 part of the NATO Alliance, and I served in
14 England from 19, about November of 1951
15 until about October, 1955, and during that
16 time I became a regular. I enlisted in the
17 regular Air Force, transferred that is from
18 the National Guard to the regular. Okay, in
19 1955, I went to Stoneybrook.

20 Q. Where is that?

21 A. That's located in West-
22 over Field, Massachusetts, Springfield,
23 Massachusetts, Westover Air Force Base, in
24 Springfield, Massachusetts. I served there
25

[5]

1 until about February of 1957, at which time
2 I was transferred to Bunker Hill Air Force
3 Base in Peru, Indiana. It is now known as
4 Grissom Air Force Base but then it was
5 Bunker Hill. I served there until, I cannot
6 get my dates straight, uh, July of 1959, and
7 I was subsequently transferred to Brize
8 Norton, B-r-i-z-e N-o-r-t-o-n, Brize Norton
9 RAF Station, that is initials R-A-F, Royal
10 Air Force Station, England, and I served
11 there until August of 1963. And I was trans-
12 ferred from there to Manzano, M-a-z-a-n-o,
13 Manzano Base, Albuquerque, New Mexico, which
14 is part of Ascentia Military Installation,
15 military base. It is a joint command to do
16 with nuclear energy and nuclear weapons. I
17 served there until 19, uh, October of 1968,
18 at which time, I am sorry, October 1967, at
19 which time I retired from the United States
20 Air Force as a Warrant Officer, Grade 3.

Q.

21 What have you done since
22 your retirement? Have you been involved in
23 business or civic affairs?

A.

24 Yes, I have been active
25

1 in the St. Aloysius Catholic Church, the
2 Long Run Pony Club, various Veterans organ-
3 izations.

Q.

All right, Mr. Horner.

5 Now, directing your attention to the subject
6 of this law suit which is the seizure and
7 confiscation by the United States Government
8 of thirteen alleged gambling devices, I want
9 you to explain for the record how you
10 happened to purchase these machines and
11 where you purchased them and under what cir-
12 cumstances you purchased them?

A.

13 Okay. My wife is British
14 and we go to England on periodic visits
15 about every two to three years. On one of
16 these visits I was shopping around for
17 various things, antiques, and things of that
18 kind, and I came across these in the
19 Hanwell, H-a-n-w-e-l-l, District of London.
20 The London Automatics Company, I believe, is
21 the name. Then I decided to purchase them.
22 This was in 1974.

Q.

23 How much did you pay for
24 these machines?
25

1 A.

2 \$24.00 each, plus I pur-
3 chased some antique checks, checks to be
4 used with these antique machines. Some of
5 the checks do not even fit these machines
6 but they are antiques. They are no longer
7 used but they are big penny type. The old
8 style British coin.

8 Q.

9 When you purchased these
10 machines, could they be operated by either
11 the insertion of British or American coins?

11 A.

12 They certainly could not
13 be operated by an American coin, Mr. Wilson.

13 Q.

14 What was your purpose in
15 buying these machines?

15 A.

16 As a collector of antiques
17 and various things, why I wanted them for my
18 own use to give away or to trade with other
19 collectors, to have in my basement as a
20 curiosity.

20 Q.

21 Okay. Mr. Horner, you
22 made a comment about some checks that went
23 with the machines. Are you saying that
24 these checks did not, were not covered by
25 the price of the machines? You purchased

1 them separately?

2 A. No, I purchased them
3 separately to go with the machines and be-
4 cause they were antique checks.

5 Q. This is how you would
6 operate these machines, by inserting these
7 checks, is that right?

8 A. Yes, that's right.

9 Q. You could have bought
10 the machines without the checks, is that
11 correct?

12 A. I could have bought the
13 machines without the checks but ---

14 Q. Now, the government has
15 alleged in their complaint some thirteen
16 machines that they have seized. I assume, I
17 think it's stipulated by the government that
18 these thirteen machines are what we are
19 talking about right now. Is that right,
20 Mr. Huber?

21 MR. HUBER: I have not
22 seen the complaint but subject to any further
23 discussion from the U.S. Attorney, I will
24 tentatively stipulate that.

25

1 Q. All right. Now, Mr.
2 Horner, I want you to describe what these
3 machines are and, if you can, the date that
4 these machines were manufactured from the
5 complaint that is filed in this case.

6 A. Well, the first one is
7 a 1935, it's manufactured in 1935. Shall I
8 read for the record?

9 MR. WILSON: No, just
10 describe what type machine, these machines
11 are the ones that you purchased.

12 A. These are the machines
13 that I purchased that are listed here, yes.
14 Four of them are slot machines with fruit
15 insignia manufactured by the N.M. Company.

16 Q. It has N.M. in one place
17 and M.M. in another.

18 A. I think probably M.M.
19 Company, it stands for Mills Manufacturing
20 Company.

21 Q. Is the Mills Manufactur-
22 ing Company still in existence?

23 A. They still are but the
24 Mills Manufacturing Company does not make
25

1 this machine nor do they make any parts for
2 it or anything else.

3 Q. Now how do you know that?

4 A. Because I am a student
5 of these machines. I have been a collector
6 and been interested in them for a number of
7 years.

8 Q. Now, you say the first
9 machine described was manufactured in 1935,
10 is that right?

11 A. 1935. All of the first
12 four machines on this complaint were manu-
13 factured in 1935.

14 Q. How do you know or believe
15 that they were manufactured in 1935?

16 A. Well, because I have
17 studied these machines and I know that they
18 are 1935.

19 Q. Have you read material?

20 A. I have read material,
21 yes. I have read material that would indi-
22 cate that they were manufactured about that
23 date. They certainly could not have been
24 manufactured any later than about 1940,
25

1 because they quit making the machine at
2 that date.

3 Q. How about machine number
4 five?

5 A. Machine number five is
6 described as an automatic dice tumbling
7 machine named Bones, manufactured, it says
8 here by Churchill of Chicago, but my know-
9 ledge of the machine is that it was manu-
10 factured by the Buckley Manufacturing Co.
11 and they are no longer in business. There
12 are no parts or anything available for that
13 machine. The company has been out of
14 business for probably twenty years or so.
15 At least twenty years.

16 Q. Now, directing your
17 attention to machine number six,

18 A. Machine number six is
19 exactly as I described machine number five.
20 It is also an automatic dice tumbling machine,
21 named Bones.

22 Q. What year, what year was
23 that machine manufactured?

24 A. Manufactured 1938.
25

1 Q. And machine number seven?

2 A. Machine number seven is
3 the same. It was manufactured, one auto-
4 matic dice tumbling machine, manufactured
5 in 1938, named Bones.

6 Q. Machine eight?

7 A. Machine eight is one
8 automatic dice tumbling machine manufactured
9 in 1938.

10 Q. What about nine?

11 A. Number nine is the same,
12 one automatic dice tumbling machine named
13 Bones, manufactured in 1938.

14 Q. What about machine ten?

15 A. Machine ten is the same.
16 One automatic dice tumbling machine named
17 Bones, manufactured in 1938.

18 Q. And machine eleven?

19 A. It's the same, one auto-
20 matic dice tumbling machine named Bones.

21 Q. Number twelve?

22 A. Number twelve is the same,
23 one automatic dice tumbling machine named
24 Bones, manufactured in 1938.

25

[13]

1 Q. And describe machine
2 number thirteen?

3 A. Machine number thirteen
4 is a home-made eight inch by twelve inch
5 dice tumbling machine.

6 Q. Is there any known, do
7 you know who manufactured it?

8 A. I have no idea. No, I
9 don't even have any idea about that one.
10 It's so old I don't know. It's a rarity.

11 Q. At the time you purchased
12 these machines or subsequent to the time
13 you purchased these machines, did anybody
14 tell you you could not ship these into New
15 York City or to Louisville, Kentucky?

16 A. No, absolutely not.

17 Q. And did you ship these
18 through a commercial overseas express
19 company?

20 A. Yes, sir.

21 Q. What was the name of that
22 company?

23 A. The name was Pickford
24 Removal, Limited.

25

[14]

1 Q.

Did you make any effort
to disguise what these machines were?

3 A.

No, sir.

4 Q.

What is the description
given on the bill of lading?

6 A.

Thirteen antique gaming
machines with small box of checks.

8 Q.

And did the Pickford
Company give you this document?

10 A.

They either gave it to
me or they sent it to me. I believe they
gave it to me. They gave it to me.

13

MR. WILSON: Do you want
to see it?

15 A.

(Continuing) These
machines, Mr. Wilson, were as far as I am
concerned an amusement.

18 Q.

Was that your purpose in
purchasing these machines?

20 A.

Yes, sir, absolutely.

21 Q.

Was there any way, or is
there any way that these machines can be
used as gambling devices?

24 A.

They cannot be conceivably

25

1 used as gambling devices at all. They
2 would not hold up one hour under any type
3 of commercial situation.

4 Q.

Well ---

5 A.

(Continuing) because
6 they would break down. There are no parts
7 available for them and they are not usable
8 as a gambling device. They are a collector's
9 item.

10 Q.

Can they be operated by
11 the insertion of any American coin?

12 A.

No, sir.

13 Q.

And then even before you
14 could use them, other than by inserting
15 these slugs that you purchased to go with
16 the machines, you would have to have them
17 converted, is that right?

18 MR. HUBER: Objection to
19 the leading. I object to the form of that
20 question.

21 Q.

Well, let me ask you
22 this. How could these machines be used by
23 inserting an American coin, do you know?

24 A.

I have no knowledge of
25

1 how to make them use an American coin, no,
2 because they have been designed to take an
3 English coin. I certainly couldn't convert
4 them to use an American coin.

5 MR. HUBER: Are you going
6 to tender this?

7 MR. WILSON: Yes, I
8 would like to tender this.

9 MR. HUBER: Okay, then I
10 will not object to your tendering that sub-
11 ject to any objection by the U. S. Attorney
12 of the Southern District of New York.

13 REPORTER'S NOTE: Where-
14 upon the bill of lading, marked Horner
15 Deposition Exhibit A, was filed with this
16 reporter and is attached hereto and made a
17 part hereof.

18 Q. Did you bring any docu-
19 ments or books with you today, Mr. Horner,
20 concerning antique gaming devices?

21 A. Yes, sir, I did. This is
22 one I would like to ----

23 MR. WILSON: Do you want
24 to see this?

1 MR. HUBER: Why don't
2 you look at it first.

3 A. Would you object if I
4 read the introduction of this book?

5 MR. WILSON: We can just
6 let her put it in the record.

7 Q. Does that book there
8 contain or depict any machine similar to
9 the one that was seized by the United States
10 Government?

11 A. Yes, sir. I have a page
12 number, but it does, yes.

13 Q. Which machine is that?

14 A. It is described in this
15 book on "Slot Machines, Pictorial Review"
16 by David G. Christensen as a 1940 Mills
17 Chrome QT.

18 Q. And would you read into
19 the record the introduction of this book,
20 please, sir, and mark that as Exhibit B?

21 MR. HUBER: Again, same
22 position. I have no objection subject to
23 any objection of the United States Attorney,
24 Southern District of New York.

[18]

REPORTER'S NOTE: Where-
upon the book named, "Slot Machines, Pictorial Review" by David G. Christensen was given to this reporter and is attached hereto as Horner Deposition, Exhibit B, and made a part hereof.

Q. And what other pamphlets did you bring with you?

A. I have here a weekly called "The Antique Trader," "The Antique Trader Weekly," published in Dubuque, Iowa, and on Page 101 of this issue which is dated November 11, 1975, one of the machines that was seized by the government is depicted listed as number five on this page, Page 101.

Q. What type of a machine is that?

A. This machine in this particular paper, would not be like the one seized from me in New York because it is a, first of all, it is a later model. Secondly, it's probably in working order where the machines that were taken from me were not in

[19]

working order. I mean they were old machines. I don't know if the machines I have are even in working order. I have tried one or two of them.

MR. WILSON: Can we introduce that as Exhibit C and enter that?

MR. HUBER: Same. I have no objection subject to any objections of the United States Attorney, Southern District of New York.

REPORTER'S NOTE: Whereupon the newspaper entitled, "The Antique Trader Weekly" dated November 11, 1975 was given to this reporter and is attached hereto and made a part hereof, marked Horner's Deposition, Exhibit C.

Q. Did you bring another document with you?

A. Yes, sir. I also have another copy of "The Trader Weekly."

Q. Do you subscribe to this?

A. Yes, sir, I do. I subscribe to this. I am a regular subscriber.

Q. What's in that copy

1 there?

2 A.

3 This paper has all sorts
4 of antiques in it, furniture, bottle caps
5 and all sorts of old memorable, memorabilia,
6 matches, old train sets, old telephones.
7 Just about anything that's an antique is
8 advertised in this, in this paper. And
9 Page 80, 81, 64, I am sorry, Page 64, Item
10 4, is one of the machines similar to one of
11 those seized in New York. It's a Mills QT.
12 It appears to me to be probably about the
13 same vintage but, of course, much better
14 condition than the ones I brought back.

15 MR. WILSON: Do you want
16 to see this?

17 MR. HUBER: Yes. I would
18 like to reserve again any objection for the
19 U. S. Attorney.

20 MR. WILSON: Sure.

21 REPORTER'S NOTE: Where-
22 upon the paper named, "The Antique Trader
23 Weekly," dated January 13, 1976, was sub-
24 mitted to this reporter and is attached
25 hereto and made a part hereof, marked

Horner Deposition, Exhibit D.

Q. Mr. Horner, I would like to ask you, when did you first receive notice from the United States Government that they had seized the antique machines.

A. Approximately August the 1st, around the first part of August when the FBI came and talked to me about these machines.

Q. And subsequent to the seizure by the United States Government, did your attorney file with the Department of Justice, a petition for admission? Is that your understanding what happened?

A. Yes, sir. It is my understanding that he did file such a petition.

Q. And to this date has the Department of Justice acted on that petition?

A. No, sir, the Department has not, and this has been almost two years.

MR. WILSON: Answer any questions that Mr. Huber may have for you.

MR. HUBER: I don't

[22]

think I have any questions.

MR. WILSON: Okay.

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1 STATE OF KENTUCKY)
2 COUNTY OF JEFFERSON) Sct.:

3 I, PATRICIA G. COWAN (WILSON) a Notary
4 Public within and for the State at Large, do hereby
5 certify that the foregoing deposition of ALEXANDER M.
6 HORNER, was taken before me at the time and place
7 and for the purpose as stated in the caption; that
8 the said witness was duly sworn to tell the truth,
9 the whole truth, and nothing but the truth; that the
10 said deposition was reduced to shorthand writing by
11 me in the presence of the witness; that the foregoing
12 is a full, correct, and true transcript of the
13 deposition so given; that the reading and signing of
14 this deposition was expressly waived by the witness
15 and counsel for all parties herein; that the
16 appearances were as stated in the caption.

17 WITNESS my signature this 22nd day of
18 April, 1976.

19 My commission expires December 1, 1977.

20
21
22 _____
23 Notary Public
24 State at Large, Kentucky
25

TRANSCRIPT OF TESTIMONY

[1]
elgw

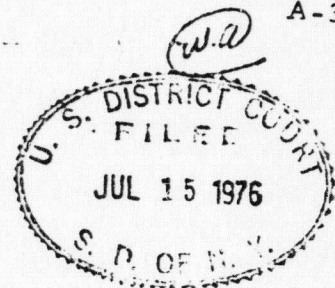
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

THIRTEEN (13) GAMBLING DEVICES,

Defendant.



74 Civ. 5588 (JMC)

New York, New York
April 30, 1976
10:30 A.M.

Before:

HON. JOHN M. CANNELLA,

District Judge.

Appearances:

ROBERT B. FISKE, JR.,
United States Attorney,
WILLIAM S. BRANDT, ESQ.,
Assistant United States Attorney.

JOHN R. WILSON, ESQ.,
Attorney for defendant.

[2]

elgw

A-33

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THE COURT: : Are you admitted to this court?

MR. WILSON: No, your Honor. We had local
counsel, but I had moved for admission to this bar to try
this case.

THE COURT: I grant the application to appear
pro hac vice. You have local counsel here that has an
address locally?

MR. WILSON: Yes, your Honor. Mr. Charles
Barris.

THE COURT: What is his address?

MR. WILSON: It's in the record, your Honor. I
could look it up.

THE CLERK: 1211 Avenue of the Americas.

THE COURT: All right.

(Case called.)

MR. BRANDT: The government is ready.

MR. WILSON: The defendant is ready.

MR. BRANDT: Good morning, your Honor. This
morning we have an in rem proceeding against 13 gambling
devices brought pursuant to 15 U.S. Code 1171 seeking
forfeiture and destruction of these 13 devices. I'd
like to call my first witness, Jack Benson.

[3]

elgw

A-34

J A C K B E N S O N, called as a witness by the
plaintiff, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. BRANDT:

Q Mr. Benson, are you presently employed?

A Yes.

Q With whom?

A With the U. S. Customs and the Treasury Department.

Q Do you have a title?

A Yes. Senior inspector.

Q For how long have you held that title?

A Two years.

Q Before that?

A I was a regular customs inspector for 18 years.

Q Can you describe your responsibilities as a
customs inspector?

A To see that the laws of the customs and the
regulations are complied with, and also I board ships, I
clear the crew, I examine the cargo, I check invoices,
I check the code numbers, I issue summonses where necessary
and I make seizures where necessary, etcetera. Quite a
few other things I do.

Q Your duties are not limited solely to boarding

[4]

1 elgw

Benson-direct

A-35

2 ships, however?

3 A No. I examine cargo on the piers where I am
4 employed, I examine cargo and the crew and I check the
5 out-turn of the containers and the cargoes themselves,
6 whether they agree with the permits, and whether the duty
7 is correct. And then we send a permit in after it's all
8 taken care of.

9 Q On or about June 26, 1974, were you called to
10 Endicott Overseas Express Company?

11 A Yes, I was.

12 Q What is Endicott Overseas Express Company?

13 A A warehouse where cargo is stored after it comes
14 off a ship.

15 Q Where is Endicott located?

16 A On 33rd Street and Tenth Avenue.

17 Q In Manhattan?

18 A In Manhattan.

19 Q Could you state the purpose of your visit to
20 Endicott?

21 A I was called there to examine a container coming
22 in on one of the ships, I think it was the Dodd America.

23 Q Could you tell us what a container is?

24 A A container is a receptacle to hold cargo. It
25 is being used nowadays as a means of bringing cargo. They claim

[5]

elgw

Benson-direct

A-36

it's more economical, it's less chance of pilferage, and it's become a regular device of bringing in the cargo nowadays.

Q How large a container was this container?

A This container happened to be a 20-foot container. They have 40-foot containers as well.

Q What was contained in this 40-foot container?

A They had about 120 pieces of cargo coming in for various individuals.

Q Did you examine the various goods within the container?

A Yes. Before I examined the container, I was given a carrier's certificate with affidavits for each individual in the container.

Q Are any of the goods that you examined on June 26, 1974, from that container that you previously described in this courtroom today?

A Yes, they are.

Q Could you point out the goods that you are referring to?

A All the machines that are on display here I saw in the warehouse at the time.

Q Have you had an opportunity today to examine the various machines?

[6]

1 elgw

Benson-direct

A-37

2 A Yes. While you were taking them out of the cartons
3 I recall the machines when I looked at them at the ware-
4 house, and they are the same.

5 MR. BRANDT: Your Honor, can we have a notation
6 in the record that the witness has identified Government's
7 Exhibits 1 through 13 for identification, or Plaintiff's
8 Exhibits 1 through 13?

9 THE COURT: So noted.

10 MR. BRANDT: Your Honor, at this time I would
11 like to offer Exhibits 1 through 13 in evidence.

12 MR. WILSON: No objection.

13 THE COURT: Received.

14 (Government's Exhibits 1 through 13 were
15 received in evidence.)

16 Q Mr. Benson, did you review any documents concern-
17 ing the cargo you indicated?

18 A I was given an affidavit for the individual
19 bringing in these machines.

20 Q I show you what is marked Plaintiff's Exhibit
21 14 for identification and ask if you can identify that.

22 A Yes. The affidavit. It's a copy of the
23 affidavit I was given.

24 Q How can you identify that?

25 A I have some of my own scribbling marks on it when

xxx

[7]

rlhe

Benson-direct

A-38

I was examining these devices.

MR. BRANDT: Your Honor, I would like to offer this exhibit in evidence, if there is no objection from Mr. Wilson.

MR. WILSON: No objection, your Honor.

(Government's Exhibit 14 was received in evidence.)

Q Did this Exhibit 14 accompany a particular shipment from that container?

A Yes, it accompanied the shipment of machines.

Q When you say "machines," you are talking about Government's Exhibits 1 through 13?

A These machines in question. These are the ones that were covered by that affidavit.

Q Would you tell us the purpose for which that type of affidavit is prepared?

A It is prepared by individuals bringing in household or personal effects, and to clear the shipment they have to produce an affidavit with a carrier's certificate. The carrier's certificate covered the whole shipment in the container, that one carrier's certificate, so there was no individual carrier's certificate, just that one carrier's certificate that I saw at the warehouse.

Q And there was an individual affidavit for each?

[8]

1 elgw

A-39

2 A Individual affidavit for each person bringing
3 in merchandise in the container.

4 Q Did you view any other documents after you
5 examined the container?

6 A After I saw the affidavit I asked for an invoice
7 and one was produced by the company. They gave me an
8 invoice to cover these shipments.

9 Q I show you Government's Exhibit 15 for identifica-
10 tion and ask if you can identify that?

11 A Yes. This is the invoice, this is the copy I
12 received.

13 MR. BRANDT: Your Honor, at this time I'd like
14 to offer Government's Exhibit 15 for identification in
15 evidence.

16 MR. WILSON: No objection, your Honor.

17 THE COURT: Received.

xx 18 (Government's Exhibit 15 was received in
19 evidence.)

20 MP. BRANDT: I have no further questions of
21 this witness, your Honor.

22 CROSS EXAMINATION

23 BY MR. WILSON:

24 Q Mr. Benson, there is nothing improper about
25 either the invoice or the affidavit under your regulations,

[9]

1 elgw

Benson-cross

A-40

2 is there?

3 A Well, the only thing I saw, I thought the value
4 of the machines was very low for --

5 Q There is nothing improper about that, assuming
6 that this was accurate?

7 A No, other than that everything was all right.

8 Q Mr. Benson, was anything else seized by the govern-
9 ment other than these 13 machines on that date from this
10 container?

11 A None, to my recollection.

12 Q Were there any bags of metal disks seized by
13 the government on that date?

14 A No.

15 Q Did you find bags in the machines themselves,
16 either in the machines or accompanying the machines?

17 A Well, all the machines were accompanied with
18 coins to fit the machines.

19 Q And you examined these bags, is that correct?

20 A Well, I examined a few of the machines. There
21 were all loaded with coins. Every machine had coins in
22 them.

23 Q And you are positive about that, that they
24 were coins?

25 A Well, some might have been slugs and some were

2 English coins.

3 Q You examined each bag and that is the basis?

4 A No, I did not examine each bag.

5 Q Did you examine each machine?

6 A I examined the machines with the FBI.

7 Q At the time of the initial seizure, how many bags
8 did you examine?

9 A At the time -- repeat that question.

10 Q At the time of the initial seizure, when you
11 confiscated the machines.

12 A Well, I didn't confiscate it.

13 Q I believe you phrased it: put a hold on them.

14 A That's right.

15 Q Did you examine each bag when you put a hold on
16 all of them?

17 A I did not.

18 Q What was the basis for putting a hold on the bags,
19 then?

20 A I did not put a hold on anything until I notified
21 the FBI.

22 Q After you notified the FBI, then you put a hold
23 on each bag, is that correct?

24 A I did not put a hold on anything.

25 Q Are you telling me that the bags that are in the

[11]

elgw

Enson-cross

A-42

1 courtroom today -- I assume they are in the courtroom
2 today -- are not being held by the government?

3 A That is part of the machine. When you bring
4 something in, that is a carrier. Are you using the machine
5 to carry coins other than using it in the machine?
6

7 Q Let me ask you again.

8 Did you examine each bag inside each machine?

9 A I did not.

10 Q Did anybody from the customs office, to your
11 knowledge, examine each bag that was contained in each
12 machine?

13 A Not to my knowledge.

14 Q Then how do you know what is in the bags?

15 A I examined the bags when the FBI came down.
16 Then I examined every machine with the FBI, and there were
17 coins in every machine.

18 Q But that was after you had put a hold on the
19 machines, is that correct?

20 A That is after I put a hold on the machines, that
21 is true.

22 Q How many bags did you examine?

23 A I can't remember.

24 Q More than one?

25 A Definitely.

[12]

1 elgw

Benson-cross

A-43

2 Q But not all of them?

3 A We examined all of them together.

4 Q After you put a hold on them, is that correct?

5 A That is true.

6 Q And this was done how many days after the ship-
7 ment arrived?

8 A You mean the -- the shipment arrived -- I didn't
9 examine the shipment until probably a week after the ship-
10 ment arrived. The container lay in the warehouse for a
11 time.

12 Q And you are telling me that there was no hold on
13 the machines until the FBI examined the machines?

14 A That's right.

15 Q But the bags, there was no hold on the bags until
16 the FBI examined the machines?

17 A The bags are part of the machine.

18 Q What do you mean they are part of the machine?

19 A The bags are being carried by the machine. If
20 the machines are held, so are the coins.

21 Q You are positive that these are coins. What
22 type of coins are they?

23 A Well, they look like they might have been shillings,
24 three pence.

25 Q All of them are coins, is that right?

[13]

1 elgw

Benson-cross

A-44

2 A Not all of them are coins, no.

3 Q Is there any reason to hold coins?

4 A No, there is no reason to hold coins at all,
5 except if they are brought in illegally.

6 Q What's illegal about bringing coins into the
7 country?

8 A If you are smuggling coins without -- money has
9 to be declared when you bring it in. A certain amount of
10 money, if you have up to \$5,000, it should be brought to
11 the attention of the inspector. If that is what the inten-
12 tion was, to bring in coins.

13 Q Up to \$5,000?

14 A Yes. Over \$5,000 it has to be declared.

15 Q How much money was contained in these bags?

16 A I have no idea because the coins wasn't the sub-
17 ject of discussion at that time. It was the machines
18 involved. We assumed that the coins were part of the
19 machine at the time. Now you make the coins a separate
20 item?

21 Q You know of no reason, then, other than the fact
22 that these coins were contained in the bags that were
23 contained in the machines, the only reason that these were
24 held by the government is because they were in the machines,
25 is that right?

[14]

1 elgw

Benson-cross-redirect

A-45

2 A The only reason the coins were held by the govern-
3 ment is because they were in the machines?

4 Q Why were they held?

5 A They are part of the machine, as far as I know.

6 Q Do you know what type of coins --

7 A When you seize a conveyance for smuggling,
8 everything in the container is seized as well, and that is
9 part of the machine. If the machine is seized, they seize
10 the coins as well.

11 Q You have examined the petition that has been
12 filed in this court, have you not?

13 A I haven't examined no petition.

14 MR. WILSON: That is all, your Honor.

15 Your Honor, at this time I would like to tender
16 to the Court a trial memorandum.

17 Mr. Brandt, do you have any objection to this?

18 MR. BRANDT: No, I don't.

19 REDIRECT EXAMINATION

20 BY MR. BRANDT:

21 Q Mr. Benson, we were talking about coins before.

22 A Yes.

23 Q Are these what you are referring to, what you
24 described as coins?

25 A Well, there were small coins -- when I was there,

[15]

1 elgw

Benson-redirect

A-46

2 we used smaller coins there. These are the large coins.

3 Q Are these what you are referring to?

4 A We didn't open up every bag to see what was
5 in it --

6 Q Is this what you are referring to when you said
7 a small coin?

8 A No, there were others besides this.

9 Q But is that of the general type that you saw?

10 A The general size, yes.

11 THE COURT: Mark them for identification.

12 MR. BRANDT: Yes, that is what I'd like to do.

13 Mark this as Plaintiff's Exhibits 16 and 17.

14 (Plaintiff's Exhibits 16 and 17 were marked
15 for identification.)

16 Q Mr. Benson, were the coins contained in a box
17 similar to this?

18 A Yes, they were.

19 Q Where were these boxes located?

20 A In the back of the machines after they were
21 opened.

22 Q Was there a receptacle in the back of the machine
23 to hold these tin boxes?

24 A There was a receptacle and some were loose, bags
25 were loose in there.

[16]

elgw

Benson-

A-47

MR. BRANDT: Your Honor, I'd like to at this time offer 16 and 17 for identification into evidence.

MR. WILSON: No objection, your Honor.

(Plaintiff's Exhibits 16 and 17 were received in evidence.)

MR. BRANDT: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. BRANDT: I'd like to call Phillip Harker.

PHILLIP HARKER, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRANDT:

Q Mr. Harker, what is your occupation?

A Special agent, Federal Bureau of Investigation. I am assigned to the gambling unit of the FBI laboratory in Washington, D. C.

Q How long have you been employed by the FBI?

A Over 14 years.

Q Could you give us your educational background?

A I have a Bachelor of Arts degree from Indiana University and a Doctor of Jurisprudence degree from the University of Louisville.

[17]

1 elgw

Harker-direct

A-48

2 Q Could you state your occupation and its nature
3 prior to your FBI employment?

4 A For two years I was a trial counselor, a prosecutor
5 in the United States Army, and for five years I was engaged
6 in the practice of law in Indiana, and during that time I
7 was the prosecuting attorney for the county where I resided.

8 Q Would you state your experience with gambling
9 in the FBI as an investigator?

10 A Well, throughout my 14 years in the FBI I spent
11 about nine of them as an investigator, and during that time
12 I, particularly for several years, investigated solely
13 the violation of various federal gambling laws.

14 I had some experience with gambling throughout
15 that entire period, but for several years I solely investi-
16 gated that type of violation, and during that time I had
17 occasion to interview extensively numerous individuals
18 who were involved as professional gamblers. I had
19 occasion to participate in and coordinate numerous gambling
20 raids. I viewed several thousand different types of
21 gambling paraphernalia of all sorts, and also was involved
22 in a number of court-ordered wiretap intercepts involving
23 gambling operations.

24 Q Do you have any specialized training in gambling
25 that you got from the FBI laboratory?

[18]

1 jw

Harker-direct

A-49

2 A Yes, sir. ;

3 Q Could you state that training, please?

4 A My training period in the gambling unit was con-
5 ducted under the supervision of another gambling expert
6 who had been in that field for many years, and during this
7 training period I studied various types of gambling books.

8 There are a number of books on the subject, which
9 have some material on casino gambling and, in particular,
10 various types of slot machines, pinball machines and the
11 like.

12 I studied also a number of pamphlets or studies of
13 pinball machines and various types of coin-activated
14 machines.

15 During this period I was also given some specific
16 individual training in Las Vegas with the Gambling Commission
17 and with the various slot machine mechanics in a number of
18 casinos who undertook to give me some training on alterations
19 of various types of machines.

20 This is the general type of supervised training
21 I underwent.

22 Q Could you state your present duties in the gambling
23 unit of the FBI laboratory?

24 A My primary duty is to receive and examine evidence
25 that is submitted to me or that in some cases I examine in

1 the field. I have examined something in excess of a thousand
2 cases of evidence. Many of these cases involve rather
3 voluminous evidence. A number of them involve various
4 types of coin-activated machines of one sort or another.
5 I make this examination and then I am available to testify
6 in the event testimony is needed.
7

8 I also lecture regularly to the various specialized
9 groups of FBI agents from all parts of the country and
10 groups of selected police officers from all parts of the
11 world who specialize in gambling. This type of lecture
12 is a seminar type of lecture that I conduct. It enables
13 me not only to do a certain amount of instructing myself,
14 but then I also get input from these individuals, who are
15 also knowledgeable persons in gambling, too, so that I
16 try to keep abreast on some developments currently of
17 gambling in all parts of the world.

18 Q Do you consider yourself to have a specialty?

19 A Yes, sir.

20 Q Would you state what you consider your specialty
21 to be?

22 A In general, it would be the detection, identifica-
23 tion, interpretation of gambling records, terminology, the
24 detection and description and identification of various
25 types of gambling paraphernalia, such as there are various

[20]

1 elgw

Harker-direct

A-51

2 types of associated equipment.

3 Q Mr. Harker, have you examined Governments
4 Exhibits 1 through 13 in evidence?

5 A Yes, sir.

6 THE COURT: Wait a minute. Do you want a voir
7 dire on him as an expert?

8 MR. WILSON: Your Honor, I'm not willing to
9 stipulate he is an expert --

10 THE COURT: I didn't say that you should stipulate
11 he is an expert. You probably didn't hear me. I said
12 do you want a voir dire on this question of whether or
13 not he is an expert.

14 MR. WILSON: I would like to reserve that for
15 cross examination.

16 THE COURT: Go ahead. I don't quite get that.
17 If I find he is not qualified, what is the sense of him
18 testifying about these machines?

19 MR. WILSON: I'd like to ask him a few questions,
20 then.

21 THE COURT: You ask him as many questions as you
22 want.

23 VOIR DIRE EXAMINATION

24 BY MR. WILSON:

25 Q Mr. Harker, have you testified in court concerning

[21]

1 elgw

Harker-direct (voir dire)

A-52

2 gambling devices in other cases?

3 A Yes, sir.

4 Q Are you familiar with the mechanism of gambling
5 devices, how they operate?

6 A In a general way. I'm not a mechanic on various
7 types of machines, but I am generally familiar how they
8 function.

9 Q Generally familiar with the function of the
10 machines, is that correct?

11 A Yes, sir.

12 Q Have you ever received any training on how these
13 machines operate, how they are put together?

14 A I have received quite a bit of training. I'm not
15 sure how much of it completely sticks, but I have had rather
16 extensive training on the mechanical workings of a
17 machine.

18 Q Have you received this training from sources
19 other than the FBI?

20 A Yes, sir.

21 Q But other than a general knowledge of how these
22 machines work, that is all you know about these particular
23 machines, is that correct?

24 A Included in the functioning of the machines I
25 am particularly concerned with the machines as to their

[22]

1 elgw

Harker-direct (voir dire)

A-53

2 capabilities of paying out, the probabilities and how
3 much they are geared to retain or pay out, and the like.

4 Q But you have no specific knowledge of the mechanisms
5 or the workings of these machines mechanically, is that
6 correct?

7 A I would say a general knowledge. I have a general
8 idea about how they function and how they work. I am not
9 what I would say a qualified mechanic who would be employed
10 to repair the machines. I have, I think, a fairly good
11 working knowledge of how they function. My main study
12 of the machines as I examine them is how they in fact do
13 work. I don't repair them, for one thing.

14 MR. WILSON: That is all.

15 EXAMINATION BY THE COURT:

16 Q Have you ever been qualified by the court as an
17 expert?

18 A Yes, sir.

19 Q How many times would you say in your past
20 experience have you been qualified?

21 A About a hundred.

22 Q Is that in both federal courts and state courts
23 and military courts and other courts, or are you limited
24 to a particular area?

25 A Federal and state courts, both, including this

[23]

1 elgw

Harker-direct (voir dire)

A-54

2 jurisdiction.

3 THE COURT: I find him qualified as an expert
4 in this area.

5 DIRECT EXAMINATION (CONTINUED)

6 BY MR. BRANDT:

7 Q Mr. Harker, have you examined Government's
8 Exhibits 1 through 13 in evidence?

9 A Yes, sir.

10 Q Are there any similarities between these exhibits?

11 A Yes, sir. They fall into, I would say, maybe
12 three general classes.

13 Q Could you tell us what those classes are?

14 A I believe it's Exhibits 1 through 4 I believe
15 are a type that is commonly called a one-armed bandit type,
16 or often called a slot machine. They are a typical type
17 of slot machines or one-armed bandits.

18 Exhibits 5 through 12, I believe it is, are of
19 a very similar class. They are captioned, or listed, as
20 bones.

21 THE COURT: Machines. Bones is a colloquial
22 term for dice, and those type of machines generally function
23 in a similar manner as Exhibits 1 through 4 but are so
24 geared to simulate the playing of a craps game.

25 Q . Is there another class of exhibits?

1 A The third class is just one single machine, and
2 that would be Plaintiff's Exhibit 13, I believe, and that
3 is a machine whereas the other machines are all mechanical
4 machines, that machine is electro-mechanical, requiring
5 some electrical operation of it. It is not of the slot
6 machine type. It has no drum or roll. Its operation is
7 more a disk arrangement and electrical circuits.

8 Q Turning to Exhibits 1 through 4, and if you would
9 like to step down from the witness box I think his
10 Honor will permit that, could you explain how you would
11 describe it as the slot machine operates?

12 (Witness leaves witness stand.)

13 A Referring to Plaintiff's Exhibit 2, being one
14 of the slot machine types, the way the machines open up
15 to get into the interior of it is to take off with a key
16 that is provided with most of these machines, take off the
17 front plate of it.

18 Before the front plate is taken off, there is
19 visible through the window in front three different characters.
20 Also also the front provides a chute for the insertion of
21 a coin, and then at the lower portion two different payout
22 chutes.

23 The one large payout chute in the center is for
24 the purpose of making a payout on a jackpot, and then the
25

payoff slot in the righthand corner is for the other payoffs.

Also, listed on the front are the various different types of payoffs. In this particular machine the payoffs are, with the exception of the jackpot, all various combinations of bells, the bell insignia plus some other insignia.

The machine is activated by the dropping of a coin in the coin chute, at which time the coin is activated in the coin chute. A lever can then be depressed.

(Demonstrating) A lever can be depressed which by spring action allows these three drums or disks or wheels to spin freely.

And then they operate sequentially. There is a timing device that then stops these three reels sequentially from left to right, one at a time. Each of these drums bears an insignia that is taped to these drums. And the insignia have various items on them.

There is a part that is called fruit, then there is a bell, an orange, a plum, cherries and a lemon. Depending on how these various different disks or drums stop, there is a cam mechanism that senses the order of stopping, and if they stop in one of the orders corresponding to the payoff on the front, then there is a disk arrangement underneath the coin chute that allows the appropriate number

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2 of coins to be released to the coin chute. Then in the
3 event of a jackpot there is a different wafer that allows
4 the coins to be discharged from the jackpot system.

5 That is essentially how the machine operates.
6 In order to calculate the long-run payoff odds, we employ
7 a manner of calculating permutations, that is, we count
8 and list the various different symbols on the three
9 respective wheels, and then by permutations calculate that
10 in the long run this machine, all of these machines, are
11 geared to pay off about 80 per cent of the money that is
12 put in them, that is, the operator could expect in the long
13 run to retain about 20 per cent of the money that has
14 been placed in the machines.

15 Q Mr. Harker, when you operated the machine during
16 the course of your testimony, could you tell us what happened?

17 A Well, I operated it by holding back this lever
18 that senses whether or not a coin has been inserted.
19 Generally a coin goes down through the chute that holds
20 back this lever, and when I depress the lever it throws
21 these springs -- this gives the spring action and allows these
22 three drums or wheels bearing the insignia to spin freely.

23 Q Let me ask the question in a slightly different
24 way.

25 Did you win the first time you operated the machine?

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2 A Yes. It came up two bells and some other insignia.
3 This machine is geared to pay off primarily on combinations
4 of bells and something else.

5 Q Mr. Harker, what, if any, control does the
6 operator have over the machine?

7 A Other than being able to alter it -- the operator?

8 Q The operator.

9 A None whatsoever. All he does is put the coin in
10 and activates the lever. Other than that, the turn-out,
11 the final insignias, in the window are purely a matter of
12 chance.

13 Q Is there any skill involved in the operation of
14 this machine?

15 A No, sir, none at all.

16 Q What does this machine pay off? What does it
17 dispense if you do get the proper combination of insignias?

18 A These particular machines are apparently so
19 arranged, that is, the coin chute arrangement, as to take
20 approximately a dime-sized slug -- there may be other
21 foreign coins that are approximately this size, but I found
22 with some of these machines, I found, particularly in
23 the back where we have the coin drawer in the back of the
24 machine, I found that in this drawer there were a number
25 of different sizes of slugs, particularly the size of slugs

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2 that are to be used in all of these Plaintiff's Exhibits
3 1 through 12. These, they all take this small slug.

4 Exhibit 13 takes a large slug, about the size,
5 maybe, of a silver dollar.

6 MR. BRANDT: I am going to have this marked
7 as Exhibit 18 for identification, the slug that you say
8 operated the machine.

xxx

9 (Government's Exhibit 18 was marked for
10 identification.)

11 Q Exhibit 18, this is the one that you used to
12 operate the machine, is that correct?

13 A It's one that would operate it.

14 MR. BRANDT: I offer this in evidence.

15 MR. WILSON: No objection.

xx

16 (Plaintiff's Exhibit 18 was received in
17 evidence.)

18 Q Can you compare Government's Exhibit 16 for
19 identification, which is the exhibit Mr. Benson described
20 as being in the back of the machines, and Government's
21 Exhibit 18? Could you compare those?

22 THE COURT: They speak for themselves. I will
23 compare them.

24 MR. BRANDT: Yes, your Honor.

25 Q Mr. Harker, are you familiar with the term "drum"

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2 or "wheel" as that term is used in gambling machines and
3 gambling parlance?

4 A Yes, sir.

5 Q What is a drum or a wheel?

6 A The drum or the wheel is the essential part of
7 most what we call one-armed bandits or slot machines,
8 such as Plaintiff's Exhibits 1 through 4, that is, it's
9 the vertically mounted wheel.

10 Q Would you point it out to the Court and to Mr.
11 Wilson so that they can see that?

12 (Witness indicates.)

13 A They are those three vertically mounted drums or
14 wheels in the center part of the interior that bear the
15 insignia, and that when activated and spun around freely
16 and then come to rest, it then allows the machine to sense,
17 if they come to rest in a certain order, whether or not
18 coins are going to be released through the coin chute.
19 So the basic operation of a slot machine is centered in
20 this wheel or drum device.

21 Q Would you say it plays an essential part in the
22 operation of the machine?

23 A Yes, sir.

24 Q We have been describing Plaintiff's Exhibit 2,
25 is that correct?

[30]

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2 A Yes, sir. ?

3 Q In terms of Government Exhibits 1, 3 and 4, do
4 they all operate in the same way?

5 A Yes, sir, they all operate in the same manner.
6 I think there was one or two different arrangements of the
7 insignia of the drums and wheels. They were slightly
8 different. But the permutations turned out that they
9 paid out approximately the same in the long run. The
10 operation mechanically was essentially the same. They
11 were essentially identical.

12 MR. BRANDT: Your Honor, for the sake of brevity,
13 can I have a stipulation from Mr. Wilson that Exhibits 1,
14 3 and 4 all operate in the same way and are the same type
15 of device and mechanism inside?

16 MR. WILSON: I will stipulate to that, your Honor.

17 Q With reference to Exhibits 5 through 12, could
18 you explain how one of those exhibits operates?

19 A This group of exhibits functions in a similar
20 sort as Exhibits 1 through 4 in that they contain two
21 drums or wheels. They are done in a little different
22 manner. Exhibits 1 through 4 have on the wheels or drums
23 pictures of fruit and things like that. The two drums --

24 Q Do you want to take the machine out of its case?

25 A I won't be able to operate it outside, but maybe

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2 I ought to take it out to display.

3 (Pause.)

4 MR. BRANDT: Can the record reflect that Mr.
5 Harker is taking out exhibits similar to Exhibit 17 from
6 the back of the machine.

7 THE COURT: So noted.

8 A The mechanics of this machine, in the central
9 portion of the machine are two large drum-shaped devices, and
10 they function essentially like the drums or wheels on
11 the normal one-armed bandit. The difference is that the
12 gear arrangement on the inside, the sensing arrangement
13 is to simulate the playing of a craps game, and essentially
14 the rules of a craps game are followed by the sensing
15 devices in this machine, that is, when the player inserts
16 a coin in the coin chute or slot, he then may depress the
17 handle and it causes in this case just one of these drums
18 or wheels to freely spin. Within the interior of this
19 drum are 13 compartments.

20 Q Could you show his Honor --

21 THE COURT: I can see it.

22 A These various little compartments, in each of
23 these 13 compartments are two dice, and as this wheel
24 first is operated, the wheel on the left, and as the wheel
25 spins and it comes to rest, this series of levers which

1 as it spins are like this, and as it comes to rest that
2
3 kicks out two of the dice that are in the compartment
4 here, kicks them into the window where it can be viewed.

5 Following the rules of craps -- well, to back
6 up each of these 13 compartments has a fixed pair of
7 dice that are going to be kicked out. The dice themselves
8 don't spin or turn over. The dice that are showing here,
9 showing the point of nine, that compartment will always
10 be nine. Whenever that section stops there, those dice
11 showing nine will always kick out.

12 Then, following the rules of craps, of on the
13 first spin the compartments having the dice with either
14 seven or eleven -- and I think there is one of each -- come
15 out, then the player wins, and I think he wins two coins
16 at that time.

17 There is a payoff listed on the front of the
18 machine. He gets two coins back. And at this point
19 the machine senses that that particular compartment has
20 been released, and then the wafers allow the two coins to
21 drop through the payoff chute.

22 If the compartments, and I think there is one
23 of each of these, that have a 2, 3 or 12 in them, if that
24 is kicked through, then the player loses his money and he
25 can't play any more without inserting more coins. But if

any one of the others, which are four, five, six, eight, nine or ten, are kicked through and are sensed by the mechanism, then the player is allowed to continue playing or continue activating the lever.

But as he continues to activate it, then we come into the use of the drum on the right side. Then it spins freely. And as it spins it comes to rest and also kicks out a pair of dice, again that are in these fixed compartments, that is, they can't change their position of the dice. As I recall, on the righthand side I believe seven of them have the point or the number seven in different combinations of the dice, of the seven point. If the player then receives a seven at that point he loses his money.

What he is undertaking to do is to match the point that he rolled, which is either four, five, six, eight, nine or ten. He has four chances to undertake to match that. In these various compartments on the right side there is one of each of those points. So that if he has a point that he is shooting for from the wheel on the left side, he has one chance out of thirteen of getting that point on the right side. If he does get that point within four operations of the lever, then the machine senses this payoff and the wafers allow again two coins to drop.

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2 There is one other feature of this machine
3 which is a little different than a craps game, which it
4 undertakes to simulate, and that is the bonus award. So
5 that if the player operating the lefthand wheel gets the
6 naturals, or seven-eleven, four times in a row, he gets I
7 think a hundred coins. It is a bonus that would very
8 rarely occur.

9 In calculating, assuming this machine to function
10 in a fair manner, and I don't know any reason why it
11 doesn't, it seems they operate fairly, this machine is
12 geared to retain approximately 30 per cent of the money that
13 is put in it and to pay out approximately 70 per cent. I
14 think that is generally how the machine functions.

15 Q Can you show the Court how this machine operates
16 in terms of the insertion of a coin?

17 A I am going to have to put it back inside the
18 box in order to use the lever.

19 (Pause.)

20 A This situation started out the eight came to
21 rest. This would be one of the point numbers. Without
22 further insertion of the coin, I am allowed to push again.
23 Now seven came out, which means I lost. I have lost my
24 coin. To further play, I'd have to insert another coin.
25 (Demonstrates) Eight came out.

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2 Q Does this machine have a drum or wheel also?

3 A Yes, sir. It's a similar arrangement to Exhibits
4 1 through 4, just geared to operate differently to simulate
5 a crap game.

6 Q How does the dice compare to the insignia?

7 A Inasmuch as the dice are in fixed locations
8 in the compartment, they function just identically as the
9 insignia on the wheels of a slot machine.

10 Q What, if any, role does skill or chance play in
11 the operation of these machines?

12 A None at all. It's purely a manifestation of
13 chance.

14 Q Mr. Harker, do you have an opinion as to the
15 purpose for which these machines were designed or manu-
16 factured?

17 A Yes, sir.

18 Q What is your opinion?

19 A That they would be solely for the purpose of
20 gambling.

21 MR. BRANDT: At this point, your Honor, I
22 would request from Mr. Wilson a stipulation that Exhibits
23 5 through 12 all operate in essentially the same way and
24 are virtually identical machines.

25 THE COURT: I think that is unfair. What you

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2 should ask him is if he would stipulate the witness would
3 so testify without conceding the truth thereof.

4 MR. WILSON: I will stipulate to that, but I
5 won't stipulate that they actually work. I don't know if
6 they work or not. I will stipulate that the mechanism is --

7 THE COURT: That he would so testify.

8 Did you operate each one of them?

9 THE WITNESS: Yes, and some of them don't work
10 perfectly. They are the same mechanism, they are so
11 constructed. They are in need of minor repairs, some of
12 them. Coin slots are sticking, essentially. But they
13 are virtually identical, 5 through 12.

14 Q Turning to Exhibit 13, you have examined this
15 exhibit?

16 A Yes, sir.

17 Q Would you describe how it operates?

18 A This design is what we would refer to as electro-
19 mechanical in that a larger coin, I guess about the size
20 of maybe a fifty cent piece, a slug, is inserted in the
21 coin chute, and when it's depressed it causes a drum arrange-
22 ment underneath the glass window to spin on a spring, and
23 within this drum or cage-like arrangement, underneath are
24 two dice. It causes these dice to shake and flip and turn
25 freely, and then the dice come to rest.

2 Then these two dice, rather than having spots
3 one through six, as common dice do, these dice, the six
4 sides bear one of three different colors, each color being
5 repeated on the opposite side. Those colors are the equiva-
6 lent of yellow, red and blue.

7 Also, inside the electrical functioning of this
8 machine is, as these dice are shaking, spinning around,
9 there is a timing device and a disk arrangement that causes
10 lights to alternately flash in two portions of the machine.
11 One is in the lower front portion, and those lights flash
12 and finally, after the timing device comes to a halt, one
13 of the lights will remain lit, and they will light up
14 then in the front or bottom part of the top one of these
15 three colors, red, yellow or blue, which would correspond
16 to the color of the dice.

17 At the same time the lights are alternately
18 flashing across six areas across the top of the machine.
19 Again those come to rest as an element of chance, come to
20 rest, one of those light bulbs being lit. And they corres-
21 pond to a payoff marking. This type of machine does not
22 have any kind of coin dispensing chute. It doesn't make
23 a payoff within itself. There is only a coin inserted,
24 which stays there.

25 The rules of this machine would be that the

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2 player would select one of these three colors of the dice
3 and if those three colors or if those two colors both
4 appeared and if also at the same time the light lit up
5 that same color of one of those three lights in front,
6 then he would get in some manner the payoff that was lit
7 corresponding across the top of the machine. And those
8 payoffs range from one through twenty.

9 With that being the rules and the operation of
10 the machine, the player would have, in the long run, the
11 probability of getting roughly 70 per cent of his money
12 back, 67 per cent of his money back, so that the machine
13 would -- or that the mathematics of the machine are geared
14 to retain for the house operator about 32 or 33 per cent.

15 Q How would the operator of the machine get his
16 payoff?

17 A The player?

18 Q The player.

19 A The player would deal with the owner of the
20 machine in some manner. The machine just doesn't dispense
21 money itself. He would have to show the operator of the
22 machine that his color dice were facing upward and that
23 that corresponded to the color lit on the front and that
24 he would be entitled to a payoff corresponding to the
25 number light on the top.

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2 Q Does the machine operate?

3 A The machine part operates. You can insert a coin
4 and spin the dice. But the electrical portion, I can see
5 at least one wire loose, that doesn't permit these
6 lights to blash back and forth. The timing device does
7 work and the mechanical device does work.

8 Q Can you show the Court how this device does work?

9 A You insert the coin in the slot, and holding
10 it rather vertically so that the dice aren't shaking around
11 very well, but you can hear right now the timing device is
12 tilâ working, which at this point the lights would be flash-
13 ing back and forth were they completely hooked up.

14 Q Mr. Harker, do you have an opinion as to the
15 purpose for which Exhibit 13 was designed and manufactured?

16 A Yes, sir.

17 Q Can you tell us what your opinion is?

18 A Yes. It would be for the purpose of gambling.

19 Q Mr. Harker, can you give us an opinion as to
20 the value of Exhibits 1 through 13?

21 A Yes, sir.

22 Q Can you tell us what your opinion is?

23 A In my opinion, particularly the machine 13 is of
24 lesser value, it's not as intricately functioning, it doesn't
25 have its interior payoffs, etcetera. I would think it

2 would be of a lesser value, possibly in the area of about
3 \$100, may be.

4 The other machines, the other two classes of
5 machines, 1 through 4 and 5 through 12, are a little more
6 of a popular style. They are not the common style that
7 are found in most casinos. I would judge they are many
8 years old. I don't know the age of them at all, but I
9 would judge that they were old enough that they would have
10 same value because of the unique operation of them, and
11 I would estimate in the area of about \$500 a machine, and
12 possibly more, depending on what unique value they have.

13 Q There was some testimony by Mr. Benson concerning
14 Exhibits 16 and 17, which he described as coins.

15 I show you Exhibits 16 and 17 and ask you if
16 you know what Exhibits 16 and 17 are.

17 A Yes, sir.

18 Q Can you tell us what they are?

19 A They are what I would call slugs. They are coin
20 shaped, they are metal-like.

21 The items, the various coin-shaped slugs, that
22 I saw in the machines, and I didn't see every coin, but
23 most of them appear to be of the type that are not legal
24 tender of any sort but are what we would call slugs, and
25 they are. At least two of the sizes are of the size that

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2 would function in these machines, that is, the larger
3 size such as Exhibit 17 is used for the operation of
4 Exhibit 13, and the smaller dime-sized coins like Exhibit
5 16 is the size that functions in all the rest of the exhibits.

6 Q When you examined these exhibits, did you find
7 coins in the back of each of the machines?

8 A I'm not sure every one of them, but essentially
9 all of them. Most of them were just stuffed clear full.
10 Most of them had a coin drawer that is part of the
11 mechanism of the machine. Those were full of slugs of
12 various sorts, and in many of the machines there were
13 coins in bags stuffed into the sides of the machines also.

14 Q Can these machines be operated with an American
15 coin?

16 A I didn't run a lot of tests, particularly of
17 Exhibit 13. The slugs that generally operate these are
18 similar in size to American coins.

19 However, I tried a dime or two a few times in
20 Exhibits 1 through 12 and found that they didn't function.
21 As they are now, it would require some alteration. It
22 wouldn't require a great deal of alteration, but as they
23 stand now I believe that none of these machines would
24 operate with the standard American coin. They might well
25 operate with an English coin or some other coin. But the

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2 ideal situation for them as they are so fitted at this
3 time would be the use of the slugs that were found here.

4 MR. BRANDT: Thank you, Mr. Harker.

5 THE COURT: We will take a five-minute recess.

6 (Recess.)

7 CROSS EXAMINATION

8 BY MR. WILSON:

9 Q Mr. Harker, when was the first time that you
10 saw these machines?

11 A The first time I personally saw them was last
12 night -- yesterday afternoon.

13 Q Yesterday afternoon you examined each machine,
14 is that correct?

15 A Yes, sir.

16 Q I believe you stated that a few of these machines
17 do not work; is that correct?

18 A Yes, sir.

19 Q Which machines do not work?

20 A I certainly couldn't tell you by number. I would
21 think --

22 Q Did you make some notes as you examined each
23 machine?

24 A No. Mainly at the time, for one thing, at the
25 time I examined they, they didn't have an exhibit number on

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2 them. I just went through the machines in the boxes and
3 tested them out. I particularly took two or three
4 apart in detail to study some of the interior. The rest
5 of the machines, many of them I verified the insignia that
6 were on the drums, the wheels, the dice, etceter; but
7 I didn't make any detailed study.

8 I inserted coins in them, and in two or three
9 instances there was a -- particularly seemed to be a mal-
10 function down in the coin chute. I couldn't tell you
11 at all which ones. I would judge maybe three or four
12 were not completely operable as they stood.

13 Q How many were completely operable?

14 A I think probably the rest of them.

15 Q But you don't know which ones are not operable
16 today, is that correct?

17 A No, I couldn't tell you offhand. It would also,
18 in order to determine if they were completely operable and
19 in perfect condition, it would require playing each of
20 them for a long period of time in order to see if every
21 single one of the payoffs functioned properly.

22 Q Do you know if there has been any alteration of
23 any of these machines by any government agent subsequent
24 to the initial seizure by the government at customs?

25 A I certainly don't know of any. I had one of

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2 my assistants initially took a look at them, brought me
3 back some data which I verified yesterday, and I didn't
4 say the material that would reflect the data didn't vary.
5 So to that extent, and I think he looked at them fairly
6 shortly after they were seized. Other than that, I wouldn't
7 know.

8 Q This assistant is another special agent of the
9 FBI?

10 A No, he is a clerical assistant of mine.

11 Q Did he advise you in writing how many of these
12 machines worked?

13 A No.

14 Q And you have nothing in your files that would
15 reflect whether there has been any alteration or repair
16 of these machines?

17 A I have no reason to think that they have been
18 changed, altered or repaired or had anything done to them
19 in any manner.

20 Q Do you have anything in your files or records
21 or the records of the FBI to indicate whether these machines
22 have been repaired or altered since their arrival in this
23 country?

24 A I have nothing of that type, no.

25 Q Mr. Harker, do you know when these machines were

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2 originally manufactured?

3 A I certainly don't know very precisely. I don't
4 know what war, suspect or judge or feel that they were
5 probably pre-war or thereabouts, machines. There have
6 not been very many mechanical machines such as these
7 manufactured since the war. Most of them have been
8 electronic.

9 Q When you refer to the war, you are referring to
10 World War II?

11 A Yes, sir.

12 Q So that would date these in the 1930s, probably,
13 would that be correct?

14 A I would think in all probability they would be
15 in that vintage, yes.

16 Q The serial number I believe on Exhibit 3 is
17 JR1. Does that indicate anything to you?

18 A I understand your point but I don't -- I'm not
19 sure how this particular machine is serial numbered.

20 In addition, in many of the situations the
21 serial number you are referring to is a part of the number
22 of a cabinet part. The interior also has some additional
23 numbers in it, too, that we haven't used those interior
24 numbers, but the JR1 could mean an initial machine, but it
25 might not. I'm just not sure of how the manufacturer of

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2 that cover plate serial number --

3 Q It would indicate these machines are of quite
4 early manufacture, wouldn't it?

5 A I don't know as the serial number really means
6 that much to me. I am sure they are fairly old as compared
7 to electronic machines.

8 Q On each one of these machines, the lever on
9 Exhibits 1 through 12, I believe, there is the numeral 6
10 and the letter D on some of them, and I believe on some
11 of the other machines it's -- I think there is one that is
12 3D.

13 What does that indicate to you?

14 A I think those stand for six pence and three
15 pence. I'm not sure I pronounce that quite right. I
16 think those are English denominations of small English coins.

17 Q Is it your opinion that these machines were
18 originally manufactured for use in England?

19 A Certainly the coin slot size is not so at present
20 that they would fit an American coin other than a slug,
21 and with that pence insignia I would assume it is so adapted
22 presently to be useful in a country using a pence, such
23 as England.

24 Q Do you know when the United Kingdom changed the
25 size of their coins?

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2 A Absolutely not.

3 Q Do you have knowledge that they have changed their
4 coinage in the last few years?

5 A I wouldn't be surprised if they got smaller,
6 but I have no idea, really.

7 Q Mr. Harker, I believe that you said that these
8 machines had a value before of their unique -- the unique
9 nature of them, is that correct?

10 A I think I probably used an expression like that.

11 Q And I think that you placed a value of several
12 hundred dollars on these machines because of their unique
13 nature, is that correct? *

14 A Yes, sir.

15 Q You are not saying that as mechanical devices
16 they have a value in excess of several hundred dollars,
17 but it's because of the nature of the machine and age
18 of the machine, is that correct?

19 A It's a combination of both. The mechanical
20 structure is very important in this type of machine. Even
21 though there are slight malfunctions in these machines, it
22 would be fairly simple for a mechanic to repair them. And
23 this type of mechanical machine is known in the --

24 Q Let me stop you there for a minute --

25 MR. BRANDT: Objection. I'd like the witness to

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2 be permitted to finish his answer.

3 Q Go ahead.

4 A This type of machine is known to be virtually
5 indestructible. The machines, the very, very old original
6 machines functioned quite well as compared to the electronic
7 machines that frequently go bad. So that the older mechanical
8 machines are valued because they continue to work well,
9 besides the fact that they are old.

10 Q Do they also have a value because of their age
11 and the fact that they were originally manufactured for
12 use in England? Don't they?

13 A Certainly by the age. I don't know why they'd
14 be particularly valuable because they are made for use in
15 England.

Q As an expert in gambling devices with the FBI,
17 do you have occasion to see many of these machines?

18 A No.

19 Q Have you ever seen --

20 A Of this type, no.

21 Q Have you ever seen this type of machine before?

22 A No.

23 Q And you I believe have stated that you have
24 examined thousands of slot machines in your career with the
25 FBI.

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1 elgw

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2 A I think so, yes, that would be a fair statement.

3 Q Does the FBI have any records of any of these
4 types of machines ever being seized by the government,
5 to your knowledge?

6 A I really haven't studied any records. I'm
7 not aware of this particular type of machine. In the last
8 few years I would have been aware of this particular type
9 of machine, and I don't recall that it has been.

10 Q These are collectors items, aren't they?

11 A I'm not sure just how you'd use the term.

12 Q They are very rare?

13 A As far as I am concerned, they are reasonably
14 rare -- they are rare. It would be hard to say. As far as
15 somebody involved in the industry, they might not be
16 particularly rare. They are to me. They were to me, put
17 it that way, as to the precise machine.

18 Q You don't find machines like these in Reno,
19 Nevada, or Las Vegas or all of the armed forces service
20 clubs outside of the United States, do you?

21 A They are almost entirely electronic.

22 Q When did they start making electronic slot machines?

23 A I believe shortly after the second World War.

24 Q None of these machines is electrically operated,
25 is that right?

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1 ELGW

Harker-cross

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2 THE COURT: ; The one.

3 Q With the exception of Number 13?

4 A Yes, sir, that's correct.

5 Q I believe that these machines have been identi-
6 fied by the government as -- it's my understanding that
7 the Court has examined each machine --

8 THE COURT: I did. I was waiting for you to
9 come in and took a look at each one and verified the serial
10 numbers.

11 MR. WILSON: I believe with the exception of
12 one machine the serial numbers are right.

13 THE COURT: As I saw them, I believe they were.
14 I checked them off. Let me see if I ticked them all
15 off. Yes, as far as I could see, they were. I examined
16 all 13 of them.

17 Q The petition in the complaint in the action
18 describes the machines as being manufactured in some
19 instances by the M & M Company.

20 Do you know where that company is located?

21 A No.

22 Q You have never heard of the M & M Company?

23 A I don't know as I have; no.

24 Q What about the N & M Company, which is alleged
25 to be the manufacturer of machine number one; have you

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1 elgw Harker-cross

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2 ever heard of an N & M Company?

3 A I don't know as I have. There would be a lot
4 of machine names that I wouldn't know. There are
5 essentially two or three prime manufacturers of machines,
6 and that is not one of them.

7 Q What about Mills, have you heard of the Mills
8 Company?

9 A Mills is one of the very common manufacturers.

10 Q Do they manufacture slot machines today?

11 A They are not the prime manufacturer. I'm not
12 sure whether they still do or not. There are a lot of
13 their machines still around, but I'm not sure if they are
14 still in business.

15 Q If these machines that are manufactured by Mills
16 do not operate and Mills no longer is in business, how
17 difficult would it be to obtain parts for these machines?

18 A Well, in the first place, they just very rarely
19 need a part that would need to be replaced by the manu-
20 facturer. They just don't have that type of malfunction
21 generally.

22 Q I thought you stated earlier that you were not a
23 mechanic, that you were not familiar with the mechanics
24 of these machines.

25 A I'm not familiar in a lot of detail. I know

2 from my experience with mechanics and with the operation
3 of the machine this is a beaut of a well-constructed
4 mechanical machine. They just continue to function, as
5 opposed to the electronic machines that frequently have
6 problems.

7 Q But being machines, they will still require
8 replacement of parts some day, won't they?

9 A I would assume from time to time. Many of the
10 parts used would be particularly difficult for a machinist
11 to duplicate.

12 Q Would it be rather expensive to duplicate?

13 A Possibly.

14 Q These type of machines are not commercially
15 feasible as gambling devices as such, are they? Could
16 you use them in a casino where they would receive constant
17 play?

18 A You certainly could. It's not the type that
19 are being used in the legal casinos of Nevada, certainly.

20 Q Why not?

21 A The mechanics have asked me why. They would
22 prefer that they would be used. The main reason is the
23 casinos prefer to use a electronic machine that has a much
24 more rapid play, and although the electronic machine is
25 far more susceptible of being gaffed, or defeated, or a

1 elgw

Harker-cross

2 cheat being able to work it, and although it frequently
3 breaks down more, the casinos apparently find it more to
4 their use to have the faster play machine. And I
5 suppose they have a certain amount of more appeal to the
6 public. The lights light up and it's more attractive.
7 But the people that handle the machines would prefer to
8 deal in an electrical machine.

9 Q You stated earlier that inside each machine
10 there were coins, is that correct?

11 A I don't know whether I used the word "coins."
12 If I did, I mean precisely what I would call slugs. Coin
13 shaped.

14 Q Do you know what is referred to as a check in
15 England?

16 A It's variously used to represent a poker chip
17 or a slug or --

18 Q Token?

19 A Token, yes.

20 Q What exactly were inside these machines? Are
21 they checks or tokens, or were they coins?

22 A As far as coins of this country --

23 Q There were no American coins in these machines?

24 A That's right, and I saw no what I would call
25 coins of England or other tender. All I saw was slugs

1 or tokens or checks or something of that nature.

2 Q There was no money in these machines?

3 A Not that I saw.

4 Q As the machines are here today, will they deliver
5 money?

6 A I don't believe they will deliver American money.
7 I'm not sure whether Exhibit 13 will take an American coin.
8 I didn't test it.

9 Q Exhibit 13 won't deliver anything.

10 A I say receive the coin, take the coin.

11 Q What about receiving any type of American coin;
12 would any of these machines accept an American coin?

13 A No, they will not as they presently stand take
14 an American coin.

15 Q There is a certain amount of amusement to these
16 machines; obviously they are not geared so people can make
17 money out of them; the machines that are in Nevada and Las
18 Vegas do deliver money on the basis of chance, is that
19 correct, but these machines that are here today have a
20 certain unique quality about them that could be considered
21 for amusement purposes, couldn't they?

22 A None that I see. I see no difference.

23 Q Do you see anything amusing about these machines?

24 A Well, what you would call amusing and I call
25

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2 amusing might be different things. I think they are
3 amusing because I am interested in them. But for what
4 we normally call amusement purposes, I don't see how any-
5 body would be amused by watching these wheels spin around.

6 Q Except by receiving these tokens.

7 A If that amused somebody. I can't see how anybody
8 could be amused by getting these tokens either.

9 Q You know what a Pachico machine is, don't you?

10 A Yes.

11 Q What's the difference between this and a Pachico
12 machine? It's for amusement purposes, isn't it?

13 A There is a certain amount of skill. A person
14 finds it more interesting to play that.

15 Q There is skill in operating a Pachico machine?

16 A One type does. There is a type that has some
17 movable levers in it, but basically I see no reason
18 for anybody to play those machines.

19 Q There is nothing illegal about a Pachico machine?

20 A Generally considered, I think not.

21 Q Generally considered, is there anything specifically
22 illegal about a Pachico machine?

23 A If a person uses it to gamble, I think it would
24 be illegal.

25 Q So the use for which a machine is put to, that

is the test, isn't it?

A In some instances, I would think so, yes.

Q And the only use to which these machines can be put is to insert the tokens that were the size of the old English coin, is that correct?

A I don't know about the old English coin, but that as they stand would be the only way they could be operable now.

Q That is what these machines reflect; they reflect they will accept a six pence and a tuppence, is that correct?

A Yes, sir.

THE COURT: Let me ask you, Counsel, why did you put in your affidavit that gambling is legal in Kentucky if you did not have in mind, or whoever imported these things, to use them for a gambling purpose?

MR. WILSON: I'm sorry, your Honor, I didn't understand the question. Why did I put in the affidavit?

THE COURT: Paragraph 4. "Furthermore, the items are meant to be shipped and delivered to a state wherein the possession and use of such a device, if they are in fact gambling devices, is legal."

Why do you make that point in your affidavit if in fact you claim now or seem to claim by your questioning

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that these are not gambling devices? I don't quite get the point.

MR. WILSON: Let me explain one thing, your Honor. First, this answer was not -- the claim was not filed by me, it was filed by another attorney.

THE COURT: All right. You set it up.

MR. WILSON: The other reason is, I assume it's in the alternative, that if they are gambling devices, the possession of them would be legal in Kentucky under the Kentucky penal code, which was recently been amended.

But under the statute which I intend to argue about, that these are not primarily intended to use in gambling anywhere, because of the nature of the machines.

Does that help the Court?

THE COURT: Well, I know what you said. I don't know what you mean by "help." I will finally decide the case one way or another and I will keep this in mind when I do it.

BY MR. WILSON:

Q Exhibit No. 13 that is in front of you there does not deliver any coins, does it?

A No, sir.

Q It's not a slot machine?

A It's not what I would consider a slot machine, no,

because it doesn't have the drum or wheel type of arrangement in it.

Q Some dice is essentially what the machine is, isn't it?

MR. BRANDT: Objection to the form of the question.

THE COURT: It is answerable. I will allow it. It is cross examination.

A There are two dice in it, yes, sir. That is part of the machine.

Q And the machine does nothing but shake the dice, is that correct?

A And then light up various lights indicating --

Q But the lights don't work?

A The lights don't work, but that is what it was wired to do, to light up various lights to determine the result.

Q Is there anything illegal about dice, possessing dice?

A In and of themselves, I understand not.

Q So the thing that makes the machine, number 13, Exhibit 13, illegal, in your opinion, is the fact that they shake and a light comes on, but it doesn't work, is that correct?

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2 MR. BRANDT: Excuse me. Objection.

3 THE COURT: That is more than one question, to
4 start with. Sustained.

5 Q Mr. Harker, there are dice in that machine, is
6 that correct?

7 A Yes, two cubes, put it that way.

8 Q And there is nothing illegal about the dice by
9 themselves, is that correct?

10 A I would think not. When we are talking about the
11 expression "illegal," it's not necessarily what I would
12 be able to characterize, but I don't know that this type
13 of cube by itself would be illegal.

14 Q Is there anything illegal about a machine or a
15 device that will shake dice?

16 A I think it would depend a great deal on how the
17 machine functioned. For instance, Exhibits 9 through 12
18 essentially shake dice. But it would depend on the machine.

19 Q Directing your attention to Exhibit 13, what
20 exactly is it that makes that device, in your opinion,
21 illegal or a gambling device?

22 MR. BRANDT: Your Honor, this witness isn't
23 here to determine whether anything is legal or illegal.

24 THE COURT: You are asking for a law opinion
25 rather than his expertise. I will sustain the objection.

1 elgw

Harker-cross

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2 Q What is it, in your opinion, that makes these
3 gambling devices, Exhibit 13 only?

4 A In the first place, there is no element of
5 skill whatsoever. And a gambling device such as we
6 generally consider it, it requires a consideration put
7 into the game of some sort, which would be the token
8 inserted in it, and there is no skill or essentially no skill
9 involved in gaming devices and there is no skill whatsoever
10 involved here.

11 There is some built-in mechanism for a possibility
12 of a reward or consideration; and that is the electronic
13 part which would light up the lights.

14 And on the converse, I can't conceive that we
15 would consider this amusing, to put the token in there and
16 watch the dice shake around and the lights light up. It
17 would be hard to understand that this would have any attrac-
18 tion to amuse people.

19 Q But there is no payoff for that machine, is that
20 correct?

21 A That's right.

22 Q Then there would have to be an agreement with
23 the possessor and owner of the machine to use it for gambling
24 before it would become a gambling device, wouldn't it?

25 A In order to get paying out, there would have to

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1 ELP

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2 be something other than the machine itself dispensing the
3 money.

4 Q So it would depend on the intent of the person
5 who possessed the machine; is that correct?

6 A It would depend -- the getting the money would
7 depend on how it is used, yes. I guess you'd say that.

8 Q If there was no intent to use it as a gambling
9 device, it is not a gambling device; is that correct?

10 A No; I wouldn't say that. I call it a gambling de-
11 vice because that is inherently what it is for. As to whether
12 it is being used as a gambling device, it obviously would
13 take somebody using it.

14 Q I have difficulty understanding your answer, then.
15 You call it a gambling device?

16 A Yes, sir.

17 Q But someone that possessed it with no purpose of
18 using it for gambling -- would it still be a gambling de-
19 vice?

20 MR. BRANDT: Objection, your Honor.

21 THE COURT: I think he has answered it already. I
22 would sustain the objection. That is his opinion, and he has
23 given it already. You may find it hard to understand, but
24 that's still his opinion.

25 Q This Exhibit 13: who manufactured that device? Do

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Harker - cross

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you know?

A I think it is referred to as a Sparky machine.
The precise company: I'm not sure.

Q What is a home-made device?

A I wouldn't think so.

Q Is there a serial number on it?

A I don't recall seeing one, no. I would say that
I think there has been a replacement of the --

Q When you say "think", have you examined the inside
of the machine?

A I haven't finished what I'm saying.

I think the board on top that shows the pay-off,
that has the markings on it, it looks to be rather crudely
made, and I would suspect it's a replacement and very well may
be hand-made. The interior of the machine is very intricate-
ly wired. I presume it has been manufactured by someone.

Q You have examined the inside of the machine; is that
correct?

A Yes, sir.

Q Is there a name of a manufacturer inside the machine?

A It seemed to me I saw the name Sparky on the machine
somewhere.

Q Does the name Sparky indicate to you the name of
a company? Is that the name of a company?

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1 ELP

Harker - cross

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2 A I don't know whether it is or not.

3 Q Have you ever seen a device like that before?

4 A I have seen a lot of types that are very similar to
5 this. I don't recall one exactly like this: a machine that
6 lays horizontal and has lights et cetera. This general class,
7 I've seen a lot of this type but not specifically like this.

8 Q As an expert with the FBI in the field of gambling,
9 do you have any knowledge that machines like the ones that
10 are in court today are collected and traded by antique collect-
11 ors across the country?

12 A They are often collected. There is quite a trade in
13 them. I wouldn't say that necessarily. What I would say:
14 antique dealers that sell furniture and that sort of thing --
15 I know there is quite a market for various types of slot
16 machines by people that are interested in getting hold of
17 them. I know there is that type, and I think in many cases
18 there are people that are trying to buy them that are not
19 what I would call commercial gamblers.

20 Q They are not racketeers, and they are not organized
21 crime?

22 MR. BRANDT: Objection, your Honor. The relevance
23 of this whole line escapes me.

24 THE COURT: I don't see the relevance of it. I
25 don't see any exceptions in the statute. I have looked at the

exceptions, and there is nothing that says an antique machine is an exception.

MR. WILSON: Your Honor, this would be a legal argument that I would like to present to the Court.

THE COURT: I have looked at the exceptions, and when I saw that the invoice says "Antique" --

MR. WILSON: Gaming devices, I believe.

THE COURT: Gaming devices. I took a look at the statute to see whether or not that was one of them. Antique guns that were manufactured before 1890, or whatever the date is, are antiques and outside the scope of the statute.

MR. WILSON: Congress did not specifically include in the Johnson Act or its amendments an exception to antique devices as they did in the Gun Control Act of 1968. However, the legislative history of the act I think reflects that it was the intent of Congress --

THE COURT: I will hear legal argument at the end of the case.

MR. WILSON: I just wanted the Court to understand why I was asking these questions.

I believe that is all, your Honor.

MR. BRANDT: I have no questions.

THE COURT: You may step down.

(Witness excused.)

1 THE COURT: Mr. Brandt?

2 MR. BRANDT: The plaintiff rests, your Honor.

3 THE COURT: I don't know that it has any relevance
4 at this time, but it might, so I would like to know whether
5 you can stipulate or get evidence into the record that these
6 machines are in approximately or substantially the same
7 condition today as they were at the time they were seized.

8 MR. BRANDT: Your Honor, I think I can give you
9 some evidence as to that right now.

10 THE COURT: Put the man on who can testify to the
11 custody of them.

12 MR. BRANDT: I call George Dyer.

13 G E O R G E D Y E R , called as a witness by the Plaintiff,
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BRANDT:

17 Q Mr. Dyer, how are you employed?

18 A I am a special agent with the Federal Bureau of In-
19 vestigation.

20 Q Are you in a particular unit at the Federal Bureau
21 of Investigation?

22 A I work in organized crime.

23 Q On or about June 26, 1974, did you go down to
24 Endicott Overseas Shipping Company?
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A I did.

Q Did you see anything at that time?

A I saw the thirteen exhibits we have before us.

Q Were you accompanied by anybody at that time?

A Another special agent and Inspector Benson.

Q At that time, did you operate any of these devices?

A We did.

Q Could you tell us what the result of your operation was?

A Several of the machines worked. Several didn't.

Q Did you attempt to repair them in any way?

A I'm not a repairman.

THE COURT: That is not an answer. Did you try?
Never mind whether you are a repairman or not.

THE WITNESS: No, sir.

THE COURT: Have you looked at these today? I
think you helped me look at some of them.

THE WITNESS: Yes.

THE COURT: Are these the same machines you saw?

THE WITNESS: Yes, sir.

THE COURT: Were they altered or in any way
changed or tampered with after they were seized?

THE WITNESS: No, sir.

THE COURT: Where were they taken after the seizure?

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ELP

Dyer - direct

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THE WITNESS: They were left at the Endicott warehouse. They were moved by the marshals.

THE COURT: How long did they stay there?

MR. BRANDT: If I may answer that, your Honor, I am the person responsible for having them moved about a week and a half ago to the United States Attorney's building, where they were stored in the basement of the building under the custody of the United States Marshals, in preparation for the trial.

THE COURT: Would you stipulate that if he were called as a witness he would so testify?

MR. WILSON: I will stipulate that he would testify to that, but I will not stipulate that the machines were not altered.

MR. BRANDT: Your Honor, I don't know that it is relevant.

THE COURT: I don't know that it is relevant, either, but in view of his cross-examination, I don't want to have people coming back here again at a future time.

Is there any marshal here that knows about this from the time they were at Overseas to the time they were brought to the Marshal's office?

MR. BRANDT: No, your Honor. The only way we could procure that testimony was to call the people from Endicott.

THE COURT: All right. I will keep the case open until you can get the people here, unless you can make a representation that Mr. Wilson will accept.

MR. BRANDT: Mr. Wilson was with me about a week ago when we went to Endicott, and the cartons were still sealed, and we had to open them at that time.

MR. WILSON: I think it could be resolved, your Honor, by an affidavit from the people in whose custody these machines were.

THE COURT: That's all right with me. Frankly, I don't see the relevance of it at this time. I can't see how they could be so changed from an innocuous object into a gambling device during the course of this time, when the witnesses have testified to them that they look the same, they appear to be the same --

MR. BRANDT: And that they operated at that time, your Honor.

THE COURT: So some elf went in there and some gnome went in there and changed the guts of these things and made them into gambling devices. Is that the way you figure it out?

MR. WILSON: No, your Honor. I think the witnesses testified that some of these machines work and some of them don't.

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ELP

Dyer - direct

A-100

THE COURT: I don't know that they have to be operable under the statute. They are certainly all operable within reasonable meanings. The witness testified it would take very little to make them operable and even to change them so they will take not only foreign coins but American coins.

So I don't quite get the relevance of your point. I don't want to bring people back here again and re-open the case on what I consider to be a very technical ground.

MR. WILSON: I think the statute itself requires a technical reading of it and requires that they be capable of delivering money by chance, by operation of chance. If they are not capable of --

THE COURT: I think "capable" means that by slight alteration it can be done. Certainly, they are capable.

MR. BRANDT: We have testimony here that certainly these machines are capable of delivering money or property.

THE COURT: You had better submit an affidavit from the Endicott people. I will keep the case open for that point alone. The affidavit should indicate a nexus from the warehouse to when they came into possession of the Marshal.

Anything else for this witness?

MR. BRANDT: No, your Honor.

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ELP

Dyer - direct

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THE COURT: All right. You may step down.

(Witness excused.)

THE COURT: Is that the end of the Government's case, then?

MR. BRANDT: Yes, your Honor.

THE COURT: Motions?

MR. WILSON: Your Honor, I would ask for a directed verdict of judgment of acquittal on Exhibit 13. I think that that clearly does not come within the statute itself.

THE COURT: I reserve decision on the motion.

MR. WILSON: On the other twelve exhibits, I would also move the Court, and I would like to file with the Court a memorandum in support of this motion, which I have outlined in my trial memorandum, that these machines are exempt under Section 1178, which amended the Johnson Act, and also should be exempted by virtue of a careful reading of the legislative history of the act.

THE COURT: I will read your brief, because I will have to read your cases and the legislative history that you referred to.

MR. WILSON: Your Honor, also at this time I would again request that the Government release these tokens or checks, which are not described in the complaint, which are not -- as to which it has never been alleged before today,

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except by the Customs agent --

THE COURT: It is very clear to the Court that they were seized at the same time. In order to operate the machines, unless they could take coins, they would be necessary, and I consider them to be a part of the machine under the circumstances.

In any event, I will reserve decision under that aspect of it and read your brief on it.

Having moved at the end of the Government's case, except for the fact that the motions are reserved in certain areas, which I have indicated, the general motion for acquittal is denied.

Do you have any evidence you desire to produce, Mr. Wilson?

MR. WILSON: Your Honor, I have filed with the Court -- there is a deposition and some exhibits which I would like the Court to consider. They have been heretofore identified, previously, and I would like them to be considered as proof put in by the defendant.

THE COURT: How do you figure that out? How can you cross-examine a brief?

MR. WILSON: No, your Honor. It is a deposition that was taken. There was an assistant United States Attorney who attended the taking of the deposition.

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THE COURT: I am sorry. I misunderstood you. I thought you were talking about a brief.

MR. WILSON: No, your Honor. It is a deposition, and there are exhibits.

THE COURT: All right. Where is the deposition?

MR. WILSON: It is filed with the Court, your Honor.

THE COURT: Mark it.

MR. BRANDT: Your Honor, I would like to object to it on grounds of relevancy of a substantial portion of the testimony in that deposition.

THE COURT: I will take it subject to connection. If I find it is connected, I will accept it. Otherwise, I will disregard it.

(Defendant's Exhibit A was received in evidence.)

THE COURT: I will take it upon the conditions stated: that it is taken subject to connection.

MR. BRANDT: Your Honor, I think just so that the record will be clear as to the nature of my objection, a substantial amount of testimony that is sought to be introduced through the deposition relates to the intent of Mr. Horner in bringing the machines in from England.

THE COURT: This is not a malum in se case; it is a malum prohibitum case. It requires no intent that I am

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1 ELP

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2 aware of.

3 MR. BRANDT: That is precisely our argument, your
4 Honor.

5 THE COURT: I am aware of what the arguments are
6 in this matter.

7 I will read the deposition, and I will treat it
8 in the manner I indicated.

9 Is there any other evidence that you wish to put in,
10 other than the deposition?

11 MR. WILSON: No, your Honor.

12 THE COURT: You rest?

13 MR. WILSON: Defendant rests.

14 THE COURT: Is there any rebuttal?

15 MR. BRANDT: No, your Honor.

16 THE COURT: All right. Both sides rest.

17 Decision is reserved.

18 You can take all these exhibits, except one of
19 them -- and I don't care which one it is -- with some coins,
20 so I can operate the thing if necessary.

21 MR. BRANDT: Did your Honor want one of the bonus
22 machines?

23 THE COURT: No. One is enough. The rest you can
24 bring back to the warehouse or wherever you are going to
25 bring them.

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2 If the parties need for purposes of submitting
3 further briefs to come up and operate it, you are free to
4 come up to my chambers, and I will lend you the slugs.

5 The only thing that we have left is the affidavit,
6 and you can send a copy to Mr. Wilson, and there is no need
7 for him to journey up here to answer it. If he feels there is
8 some answer he wants to give, I will hold this open for two
9 weeks.

10 MR. WILSON: Your Honor, there would be nothing
11 that I would want to rebut or could rebut from the people who
12 had custody.

13 THE COURT: All right. You get it in within the
14 next week or so. I will hold the case in the meantime.

15 MR. WILSON: Your Honor, have you set a time for
16 the filing of briefs in this case?

17 THE COURT: I was under the impression you had
18 filed a brief. Do you want to file a post-trial brief?

19 MR. WILSON: Yes, your Honor.

20 THE COURT: I will leave it up to you. How much
21 time do you want?

22 MR. WILSON: Can we have sixty days?

23 MR. BRANDT: Your Honor, the problem is that we have
24 these machines, that take a lot of space. The Marshal does
25 want them destroyed. I would want it done much more --

[75]

ELP

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THE COURT: How about thirty days? Both sides
can file anything they want to within a thirty-day period.
I will reserve decision.

Today is April 30th. I will give you until May
8th, which is a Friday, which is four weeks from today. Is
that long enough for you?

MR. WILSON: It should be.

THE COURT: All right.

- - -

[76]

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jack Benson	3	8	14	
Philip Barker	16	42		
George Dyer	65			

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
1 through 13		6
14		7
15		8
16	15	16
17	15	16
18	28	28

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Elizabeth L. Lewis
 Official Court Reporter
 U. S. District Court

JUDGMENT

[Entered Aug. 31, 1976]

The issues in the above entitled action having been brought on regularly for trial before the Honorable John M. Cannella, United States District Judge on April 30, 1976, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on July 29, 1976, having filed its opinion and order, constituting its findings of fact and conclusions of law, in accordance with Rule 52(a), Federal Rules of Civil Procedure, and the Court having assessed costs against the claimant, Alexander M. Horner, and further upon reading of the affidavit of William S. Brandt, Assistant United States Attorney, it is hereby

ORDERED, ADJUDGED and DECREED that plaintiff, UNITED STATES OF AMERICA have judgment against the defendant THIRTEEN GAMBLING DEVICES, (the "Devices") and it is further

ORDERED, ADJUDGED and DECREED that the Devices are forfeited to the UNITED STATES pursuant to 15 U.S.C. § 1177, and it is further

ORDERED, ADJUDGED and DECREED that the United States Marshal shall transfer custody of trial exhibits 1, 5, 6 and 7 to the Federal Bureau of Investigation to be utilized generally and in a manner not inconsistent with the following:

(a) Exhibits 1 and 5 for training and display purposes at the Gambling Unit of the F. B. I. Laboratory in Washington, D. C.,

(b) Exhibit 6 for public display purposes at the Hoover Building in Washington, D. C., and

(c) Exhibit 7 for display and training purposes at the FBI Academy in Quantico, Virginia, and it is further

ORDERED, ADJUDGED and DECREED, that the United States Marshal destroy the remaining Devices and it is further

ORDERED, ADJUDGED and DECREED, that the United States Marshal make his disposition herein as ordered and file his return according to law, and it is further

ORDERED, ADJUDGED and DECREED, that the United States shall have costs pursuant to 28 U.S.C. §1920, 1921 and 1923 Rule 54(d), in the amount of \$479.12.

Dated: New York, New York
August 27, 1976

/s/ John M. Cannella
United States District Judge

OPINION AND ORDER

COPY

A-109

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

OPINION
AND ORDER

-against-

THIRTEEN (13) GAMBLING DEVICES,

74 Civ. 5588
(JMC)

Defendant.

-----X

CANNELLA, D.J.:

Plaintiff's application, for forfeiture of thirteen (13) gambling devices seized on June 26, 1974 upon their entry into this country, is hereby granted.

Pursuant to 15 U.S.C. § 1177,

Any gambling device transported, delivered [or] shipped ... in violation of the provisions of this chapter shall be seized and forfeited to the United States.

Section 1172 makes it unlawful:

... knowingly to transport any gambling device to any place in a State ... from any place outside of such State....

In that the instant machines were seized in New York City en route from London, England to Anchorage, Kentucky, they are subject to seizure and forfeiture to the

United States if they come within the statutory definition of "gambling devices." A "gambling device" is defined as:

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property....

The uncontradicted evidence at trial established that all thirteen (13) machines are gambling devices within the above definitions. In addition, the subject machines were before the Court during trial, affording the Court ample opportunity to examine and inspect them as well as to observe the operation of selected machines with the covers removed and the mechanisms exposed to view.

The machines marked Plaintiff's Exhibits One

through Four are what are commonly called "slot machines," or "one-armed bandits." These machines operate through the insertion of a slug, or "check" as they are sometimes called, into a coin chute followed by depression of a lever on the side of the machine. This causes three individual reels, each of which bears a row of insignia around its outer perimeter, to spin freely. A player "wins" when the reels come to rest with the insignia arranged in certain predetermined sequences. Each of the various winning combinations results in delivery to the machine's operator of a varying number of the slugs used to operate the machine. The success or failure of the venture and the number of slugs delivered on any particular operation of a machine is determined entirely by the operation of the laws of chance. No skill is involved.

The machines marked Plaintiff's Exhibits Five through Twelve are automatic dice-tumbling machines, and they operate similarly to the "one-armed bandits" in that their essential components include two freely spinning reels triggered by depression of a lever. Each reel contains thirteen compartments arranged around its outer perimeter, each compartment housing a set of dice in fixed positions. These machines are constructed in such a way as to simulate the playing of a craps game, with payoffs

made on a random or chance basis. The fixed dice perform a function identical to that of the insignia on the "slot machines." A win or loss, determined by the position of the reels as they come to rest, is indicated by the particular set of dice which stops beneath a window on the cover of the machine. Each of these twelve machines is designed to retain, during the long term operation of the machine, between twenty and thirty percent of the slugs used to operate them.

As this brief discussion indicates, these machines are gambling devices within the meaning of the statute. When operated, these twelve machines may deliver property as a result of the application of an element of chance. Furthermore, the freely spinning reels are essential parts of each of these machines, and their characteristic retention of a percentage of the slugs or checks used to operate them indicates that they were designed and manufactured primarily for use in connection with gambling.

Although Plaintiff's Exhibit Thirteen is a machine which operates in a manner distinctly different than the other twelve, the Court concludes that it, too, was designed and manufactured for gambling purposes. It contains one set of dice beneath a window in the cover

of the machine. When in complete working order, the insertion of a slug into the coin slot causes the dice, which have colored instead of numbered faces, to spin simultaneously with the flashing of two sets of colored lights. If when this activity ceases the colors on the upward faces of the dice match one set of lights, the player becomes entitled to a payoff as indicated by the other set of lights. The machine itself does not make the payoff as is the case with the other machines. The player collects by consulting with the individual in charge. This machine is also constructed to pay off between sixty and seventy percent of whatever currency is used to operate it. (In its present condition this is a slug of approximately half-dollar size.)

Claimant does not seriously contest the claim that the subject machines are gambling devices within the meaning of 15 U.S.C. § 1171. Rather, he rests his defense to the instant forfeiture proceeding on certain of the statutory exclusions. The first of these is 15 U.S.C. § 1178, which, it is claimed, exempts from the operation of the Act these so-called "antique" machines, machines which were allegedly purchased for amusement purposes only and are incapable of being operated by American coins. Even if these factual assertions were

true, the Court does not agree that the instant machines would thereby be brought within the exclusion of Section 1178.* Although the machines are, in their present state, incapable of receiving American money, expert testimony indicated that with slight adjustments they would be able to do so. Additionally, machines one through twelve do deliver property (to wit, the slugs) as a result of the application of an element of chance. Of course, the slugs are easily convertible to money. The Court has concluded that they were designed and manufactured primarily for gambling purposes. Thus, they are not within the limited exceptions outlined in Section 1178.

As far as Exhibit Thirteen, the so-called home-made dice-tumbling machine, is concerned, the Court

* None of the provisions of this chapter shall be construed to apply --

.

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property,

.

likewise finds Section 1178 inapplicable, in that the machine was designed and manufactured primarily for use in connection with gambling, and by its operation a player may become entitled to receive, as a result of the operation of an element of chance, money or property.

Claimant further alleges exemption by way of the proviso to Section 1172 of the Act, which states:

That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

However, the Court has not been referred to and has not been able to discover any New York or Kentucky statute specifically enumerating gambling devices of the instant type as lawful. See North Beach Amusement Co. v. United States, 240 F.2d 729, 731 (4th Cir. 1957).

Claimant's final contention is that this forfeiture proceeding cannot succeed because the machines were not "knowingly" transported in foreign commerce as he was unaware that the machines "would ultimately be seized as gambling devices." (Defendant's Supplemental Trial Memorandum filed June 2, 1976 p. 5). Claimant's own testimony (Deposition of Alexander H. Horner, dated

April 20, 1976 and introduced into evidence at trial as Defendant's Exhibit A) makes it clear to the Court that he was well aware of the nature, function and use of the machines when he purchased them in London, England and arranged to have them shipped to the United States. By his own admission claimant is a student of the types of machines involved herein. He has collected them for a number of years. The statute does not require more knowledge than this. See United States v. Twelve Miami Digger Slot Machines, 213 F.2d 918, 921 (5th Cir. 1954); United States v. 5 Gambling Devices, 346 F.Supp. 999, 1004-05 (W.D. La. 1972).

CONCLUSION

The Court finds that the "slot machines" (Plaintiff's Exhibits One through Four) and the automatic dice tumbling machines (Plaintiff's Exhibits Five through Twelve) are gambling devices within 15 U.S.C. § 1171(a)(1)(A) in that each is a mechanical device having as essential parts at least one reel with insignia thereon. When operated, each of these machines may deliver a slug or a number of slugs as a result of the application of an element of chance. Moreover, in light of the expert's analysis of the machines' operation, the Court concludes that these machines, as well

as the homemade dice machine, were designed and manufactured primarily for use in connection with gambling.

The Court further finds that the homemade dice tumbling machine (Plaintiff's Exhibit 13) is a gambling device as defined in Section 1171(a)(2)(B) in that its operation may entitle its operator to receive money or property as a result of the application of an element of chance.

The Court also finds the "slugs" or "checks" seized with the machine to be "gambling devices" under Section 1171(a)(3) of the Act, as they are intended to be used in connection with the above-mentioned gambling devices and are essential parts thereof.

Accordingly, the machines and slugs are ordered forfeited to the United States of America, and costs are assessed against the claimant. The Government is instructed to submit a judgment on notice within two weeks.

The foregoing constitute the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Civil Procedure 52(a).

SO ORDERED.

JOHN M. CANNELLA

JOHN M. CANNELLA, U.S.D.J.

Dated: New York, N.Y.
July 29, 1976.

AFFIDAVIT OF WILLIAM S. BRANDT IN SUPPORT OF
THE RELIEF SOUGHT IN PROPOSED JUDGMENT

A-118

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :

Plaintiff, :

- v - :

AFFIDAVIT

THIRTEEN (13) GAMBLING DEVICES, :

74 Civ. 5588 (JMC)

Defendant. :
-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

WILLIAM S. BRANDT, being duly sworn deposes and
says:

1. I am an Assistant United States Attorney in
the office of Robert B. Fiske, Jr., United States Attorney
for the Southern District of New York, attorney for the
plaintiff United States. I make this affidavit in support
of the relief sought in the proposed judgment.

2. The FBI has requested that four of the for-
feited gambling devices not be destroyed and instead be
turned over to them. The four devices would be used in the
following manner. Exhibits 1 and 5 would be used by the
FBI's Gambling Unit Laboratory for purposes of training and
display. Exhibit 6 would be put on display for visitors at
the FBI's Headquarters at the Hoover Building in Washington,
D.C.. Exhibit 7 would be used for display and training

Affidavit of William S. Brandt in Support of
the Relief Sought in Proposed Judgment

A-119

purposes at the FBI Academy in Quantico, Virginia. The remaining gambling devices would be destroyed.

3. The Court has directed that costs be assessed against the Claimant, Alexander M. Horner. A statement of costs necessarily incurred for which disbursement was actually made is set forth below:

Fees of the Clerk	15.00
Fees of the Marshal	6.72*
Fees of the court reporter	125.40
Docket fees under 28 U.S.C.	
§1923	20.00
Publication of the warrant	
of arrest (one time)	48.00*
Storage charges under 28 U.S.C.	
§1921	<u>264.00</u>
TOTAL	\$479.12

The United States is entitled to these costs pursuant to 28 U.S.C. §§1920, 1921 and 1923.

4. Recovery is sought of the costs of the trial transcript which used in preparing the post-trial papers. We believe the trial transcript was necessary because the claimant's post trial memorandum raised factual issues

* Copies of invoices are annexed hereto as Exhibit A.

Affidavit of William S. Brandt in Support of
the Relief Sought in Proposed Judgment

A-120

concerning the gambling devices. In order to rebut those assertions it was necessary to obtain a copy of the transcript and refer the Court to specific testimony of the expert witness. The cost of the 76 page transcript would be \$125.40, at the regular daily rate. We say "would be" because the United States ordered the transcript on a daily basis for which a premium was paid. However, we do not seek recovery of the premium.

5. Pursuant to 28 U.S.C. § 1921 the United States is entitled to recover the costs of storing the devices for 22 months. The total cost of that storage was \$264. Copies of the invoices are attached as Exhibits B and C.

WHEREFORE, the Court should sign the enclosed judgment.

/s/
WILLIAM S. BRANDT
Assistant United States Attorney

Sworn to before me this
20th day of August, 1976.

/s/
Notary Public

STATEMENT OF EXCEPTIONS AND OBJECTIONS
TO JUDGMENT TENDERED BY PLAINTIFF

A-121

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

74 Civ. 5588 (JMC)

THIRTEEN (13) GAMBLING DEVICES,

Defendant.

STATEMENT OF EXCEPTIONS AND OBJECTIONS
TO JUDGMENT TENDERED BY PLAINTIFF

The defendant and claimant, by counsel, respectfully excepts and objects to the Judgment tendered by the plaintiff as follows:

1. The plaintiff seeks to recover costs in the amount of \$479.12. Included in this amount is the expense of court reporter for \$125.40. In the government's Affidavit in support of costs, page 2, paragraph 4, the government seeks recovery of costs of trial transcript. This transcript was not ordered by the Court, never received by plaintiff, and clearly not necessary for the court's decision. It was obtained for the use and convenience of the government only and is therefore not taxable as costs.

Statement of Exceptions and Objections
to Judgment Tendered by Plaintiff

A-122

The cost of a transcript of the proceeding at the trial is a taxable item only if transcript is ordered by court, and is not taxable if counsel orders it for his own use. Firtag v. Gendleman, 152 F. Supp. 226; also see Marshall v. Sou. Pacific Co., 14 F.R.D. 228, and Gillam v. A. Shyman, Inc., 31 F.R.D. 271.

Accordingly, the defendants and claimant objects and excepts to the cost of the trial transcript being included as part of the costs of this action.

Respectfully submitted,

/s/ _____
CHARLES BARRIS
Attorney for Defendant
1211 Avenue of the Americas
New York, New York 10036

/s/ _____
JOHN R. WILSON
620 Marion E. Taylor Building
Louisville, Kentucky 40202

I hereby certify that a copy of the foregoing Statement of Exceptions and Objections to Judgment was on this _____ day of _____, 1976, mailed to William S. Brandt, Assistant United States Attorney, One St. Andrew's Plaza, Room 531, New York, New York 10007

/s/ _____
CHARLES BARRIS

REPLY AFFIDAVIT

A-123

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff, :

- v -

: REPLY AFFIDAVIT

THIRTEEN (13) GAMBLING DEVICES, : 74 Civ. 5588 (JMC)

Defendant. :

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

WILLIAM S. BRANDT, being duly sworn deposes and
says:

1. I am an Assistant United States Attorney in
the office of Robert B. Fiske, Jr., United States Attorney
for the Southern District of New York, attorney for the
plainciff United States. I make this affidavit in reply to
the claimant's opposition to the inclusion of the trial
transcript as costs pursuant to 28 U.S.C. §1920 (2).

2. Claimant objects to the inclusion of the costs
of the trial transcript on the grounds that it was ordered
solely for the convenience of the United States.

3. The United States ordered the transcript to aid the Court in preparing post-trial findings of fact and conclusions of law as required by Rule 52(a), Fed. R. Civ. P.. In order to do this we felt that specific transcript references was necessary. This was particularly so because the Claimant raised factual issues in his post-trial papers.

For example we found it necessary to rebut Claimant's assertion at page 2 of his Supplemental Trial Memo that the machines could not be operated without cheques and that parts might not be available.

The transcript was also necessary to rebut the Horner deposition testimony set out at page 3 of the Claimant's Supplemental Trial Memo.

Finally, the operation of the machine was complex - a problem somewhat rectified by having the expert's testimony available for review.


4. We believe that the Court did find it helpful or even necessary to have a copy of the trial transcript. The Court requested, and we provided the Court with our copy of the transcript.

5. Claimant's statement on the law of awarding the costs of trial transcripts is somewhat outdated. Such costs are recoverable where "[d]efendants' post-trial motions raised issues for which the transcript was necessary to refute." Federal Savings & Loan Ins. Corp. v. Szarabalka, 330 F. Supp. 1202, 1209 (N.D. Ill. 1971).

Reply Affidavit

A-125

6. What constitutes "necessary" transcript costs is a discretionary matter. Rule 54(d), Fed. R. Civ. P.. Even the transcript obtained for the convenience of the litigants is properly taxable; the check being the Court's discretion in not allowing wholly unreasonable costs. United Rubber, Cork, etc. v. Lee Nat. Corp., 62 F.R.D. 194 (S.D.N.Y. 1974); 6 Moore, Federal Practice § 54.77 [7] (1976 ed.) We respectfully submit that the costs of the transcript were both reasonable and necessary.



WILLIAM S. BRANDT
Assistant United States Attorney

Sworn to before me this

2d day of September, 1976.

15

NOTARY PUBLIC

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Cable 212 691 1111

1 Copies Received
Date 1/19/77
Firm U.S. Attorney
By _____

COPY RECEIVED

Robert B. Fiske, Jr.
UNITED STATES ATTORNEY

1/19/77

Marion L. Bryant